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“WE MINERS TAKE OUR LIVES IN OUR HANDS
SAVE NOTHING AND BELIEVE ONLY IN LUCK”

THE LIVED EXPERIENCE OF HUMAN RIGHTS AND LABOR VIOLATIONS IN SELECT
ARTISANAL MINING SITES IN NORTH AND SOUTH KIVU

Daniel Rothenberg & Ben Radley

« All Congolese have the right to benefit from national wealth. The state has the duty to redistribute this wealth equitably and guarantee the right to development »

Article 58 of the DRC Constitution, 2006

“WE MINERS TAKE OUR LIVES IN OUR HANDS, SAVE NOTHING,
AND BELIEVE ONLY IN LUCK”

THE LIVED EXPERIENCE OF HUMAN RIGHTS AND LABOR
VIOLATIONS IN SELECT ARTISANAL MINING SITES IN
NORTH AND SOUTH KIVU

DANIEL ROTHENBERG AND BEN RADLEY

MATERIAL FROM THE
KAZISAFI/RITEWORK PROJECT

HEARTLAND ALLIANCE FOR HUMAN NEEDS AND
HUMAN RIGHTS

AND

CENTER FOR LAW AND GLOBAL AFFAIRS AND THE
SCHOOL OF POLITICS AND GLOBAL STUDIES AT
ARIZONA STATE UNIVERSITY

2014

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ACRONYMS

This report uses a number of acronyms in both French and English. Where acronyms are first used the full name of the organization, group or term is presented followed by the acronym in parentheses. The following list may be a useful guide to the multiple acronyms referenced in the report.

3TG:	Tin, tantalum, tungsten and gold
3Ts:	Tantalum, tin, and tungsten
AFDL:	Alliance des forces démocratiques pour la libération du Congo-Zaire
AJEDIKA:	Association des Jeunes pour le Développement Intégré-Kalundu
ARAL:	Arche d'Alliance
ASM:	Artisanal and small-scale mining
ASU:	Arizona State University
AU:	African Union
BEST:	Bureau d'Études Scientifiques et Technique
BGR/CTC:	Bundeanstalt für Geowissenschaften und Rohstoffe/Certified Trading Chains
CAT:	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CEDAW:	Convention of the Elimination of All Forms of Discrimination Against Women
CEEC:	Centre d'Evaluation, d'Expertise et de Certification
CLGA:	Center for Law and Global Affairs
CMR:	Conflict Minerals Report
COMBECKA:	Coopérative minière pour le Bien-etre des Communautés de Kalehe

COMIDEA:	Coopérative Minière des Exploitants Artisansaux
COMIKA:	Coopérative Minière de Kalimbi
CRC:	Convention of the Rights of the Child
CTCPM:	Cellule Technique de Coordination et de Planification Minière
EITI:	Extractive Industries Transparency Initiative
FARDC:	Forces Armées de la République Démocratique du Congo
FDLR:	Forces Démocratiques de Libération du Rwanda
HA:	Heartland Alliance
ICCPR:	International Covenant for Civil and Political Rights
ICESCR:	International Covenant for Economic, Social, and Cultural Rights
ICGLR:	International Conference on the Great Lakes Region
ILO:	International Labor Organization
ITSCi:	ITRI Tin Supply Chain initiative
LSM:	Large-scale mining
MONUSCO:	United Nations Organization Stabilization Mission in the Democratic Republic of the Congo
NCPs:	OECD National Contact Points
OECD:	Organization for Economic Cooperation and Development
PNC:	Police Nationale Congolaise
RCM:	Regional Certification Mechanism
RINR:	Regional Initiative on Natural Resources
SADC:	Southern African Development Community

SAESSCAM: Service d'Assistance et d'Encadrement d'Artisanal et Small Scale Mining

SPGS: School of Politics and Global Studies

STAREC: Programme de Stabilisation et de Reconstruction des Zones sortant des conflits armés

UDHR: Universal Declaration on Human Rights

UNGoE: United Nations Group of Experts on the Democratic Republic of the Congo

ZEAs: Artisanal Exploitation Zones

1. INTRODUCTION TO THE PROJECT

This report presents the findings of a documentary project on the lives of miners and others working in the artisanal mining industry in select sites in North Kivu and South Kivu in the eastern Democratic Republic of the Congo (DRC). This work is part of a larger project known as the Initiative to Enhance Worker Rights in the Kivus (RITEWORK) managed by Heartland Alliance for Human Needs and Human Rights (HA), which is known in the DRC as Kazisafi.¹ This element of the project was designed by a faculty member at Arizona State University associated with the Center for Law and Global Affairs at the Sandra Day O'Connor College of Law and the School of Politics and Global Studies.²

The Kazisafi/RITEWORK project is a two-year initiative funded by the United States Department of State's Bureau for Democracy, Human Rights and Labor designed to strengthen respect for worker rights in the mining industry in regions of North Kivu and South Kivu. The larger project links the work detailed here – the collection and analysis of information on the lives of miners and others working in the industry and their experiences of human rights violations – with a set of service and capacity building activities.

These activities were developed and implemented in coordination with three Congolese civil society organizations: *Association des Jeunes pour le Développement Intégré-Kalundu* (AJEDIKA); *Bureau d'Etudes Scientifiques et Technique* (BEST); and *Arche d'Alliance* (ARAL).³ The work was managed out of HA offices in Bukavu and Uvira (linked to the group's regional headquarters in Bujumbura, Burundi) and integrated with local partners' contacts and social networks. The project's

¹ In Swahili, “kazi” means “work” and “safi” means “cool” in the sense of “good”, “positive” and “fair” so this means “Decent Work”, “Good Work” or “Quality Work”.

² The Principal Investigator (PI) for the project is Daniel Rothenberg who is Professor of Practice and Lincoln Fellow for Ethics and International Human Rights Law, as well as founding executive director of the Center for Law and Global Affairs. He teaches in the School of Politics and Global Studies and the Sandra Day O'Connor College of Law.

³ The three partners were selected through a mapping exercise of local actors in the region and significant HA consultation with community experts and others. The selection criteria leading to the decision to work with these groups was then based on: an assessment of relevant core expertise and background in advancing labor rights; past experience in advocacy, outreach, and socio-economic support; capacity to manage project activities and perform monitoring and evaluation; and positive references from previous partners and others.

fieldwork and activities focus primarily on six mining sites in the region including Katogota, Lemera, Mukela, Mukungwe, Nyabibwe and Nzibira (detailed descriptions of these sites can be found in section four).

The overall goal of the Kazisafi/RITEWORK project is to build local capacity, create positive and productive paths for miners and others seeking to leave the industry, and develop strategies for a more protective artisanal mining industry premised on respect for the fundamental rights of the Congolese people. During its two years of operation, the project conducted outreach to over 6,000 workers, offered alternative livelihood training and various income-generating options, such as carpentry and tailoring, to over 1,200 workers, and provided multiple educational and training services.

The documentation component of the project detailed in this report focuses on improving the quality of locally-led, focused, context-sensitive data collection and analysis. To do this, the project team gathered data using two distinct methods. First, HA staff and local partners collected data on case studies of alleged human rights and labor law violations in the six field sites. Second, the project team collected oral histories from miners, porters, washers and others working in the mines. In addition, a small number of oral histories were collected from crew bosses, mine bosses, mine police and government officials.

The goal of the documentary initiative is to better understand the lived experience of miners and others as a means of informing effective policy. Through a careful review of how miners understand their experiences, it is then possible to develop context sensitive methods of improving workers' lives, increasing safety and other protections, preventing ongoing violations, and developing sustainable mechanisms for minimizing the impunity that characterizes extractive industries in the eastern DRC.

These are complex and difficult goals and the challenges of the artisanal mining industry do not have easy solutions. With this in mind, this project introduces some useful data on the lives of miners and others and uses this material to craft a set of recommendations. The study does not pretend to answer the many difficult questions facing artisanal mining in the eastern DRC, but rather seeks to contribute to the rather impressive literature on the industry, providing additional material of value for engaging the multiple existing domestic and international programs in this area.

This project focuses on understanding violations within the artisanal mining industry from the perspective of miners and others working in the mines such as porters and washers. This perspective involves at least two elements. First, there is the question of how the experiences of people involved in artisanal mining represent human rights violations and other formal violations of the law. That is, to what degree can what these individuals live through be analyzed from the perspectives of international and domestic law? Second, it is important

to listen to the miners, porters and others about what is most troubling about their own experiences of the industry. There is not always a perfect overlap between these two issues. For example, there are multiple violations of the DRC mining code – tunnels that exceed the mandated depth, the failure to engage in environmental impact reviews, the registration of all artisanal miners with miners cards, etc. – that appear to be of limited relevance to those working in mines (even if adherence to these rules might provide real benefits to workers). And, there are other actions, such as insults, mistreatment and forms of systematic humiliation that are not illegal, yet leave miners angry, breed conflict, define their disempowerment and are, thus, characteristic of the industry.

Examination from this perspective illuminates important points that should inform work intended to improve rights protection and regulation in artisanal mining in the eastern DRC. Perhaps what is most interesting and significant is the fact that the structure of the artisanal mining industry and its inherently repressive and ill-regulated nature cannot be fully understood through a legal analysis of rights, whether grounded in the broader protective vision of human rights or as bound to the specifics of mining related laws and regulations. In part, this is because miners and other workers in the industry have limited direct engagement with what is a violation of the law and what is not. This should change and with it should come mechanisms to ensure greater legal protections.

Because so many aspects of the artisanal mining industry violate multiple domestic and international laws, there is little value in enumerating all of the violations found in the industry. Similarly, it is not especially useful to outline in a point by point manner the full array of systematically repressive conditions that represent legal problems based on the multiple applicable domestic and international laws. Yet, as they respond to the daily challenges of working in the artisanal mining industry, Congolese seek to use the tools they have to minimize their risks and maximize their benefits. Miners and others direct their sensitivity and intelligence towards navigating work in a difficult and dangerous industry that offers multiple advantages alongside significant brutality and abuse.

While many aspects of the system operate to disempower miners and others working in the industry, there are multiple cases in which workers seek to mitigate dangers and improve their lives. Some mine crews are tightly knit and display a substantial cooperative spirit. Miners commonly pool their resources, assist each other in hard times and work jointly to aid those injured or ill. At times, they present a united front in the face of various authorities, but in general those with power use their position to exert violence and control over workers.

Artisanal mining is essential to the economies of North and South Kivu and is a key component of the lives of hundreds of thousands if not millions of Congolese. With this in mind, it is not

ultimately useful to reduce the industry to a catalogue of violations or to focus only on the very real abuses that characterize the extraction of minerals from the region without an adequate grounding in context. That is, a review of acts of violence and abuse alone provides minimal understanding of what is really going on and, with it, an inadequate capacity to develop meaningful policy responses.

2. ARTISANAL MINING AND HUMAN RIGHTS⁴

a) Artisanal mining in North Kivu and South Kivu

The DRC's enormous mineral wealth has long been heralded as a 'geological scandal', and includes important deposits of copper, cobalt, tin, tantalum, gold and diamonds (World Bank, 2010a). Eager to capitalize on this wealth, the Belgian colonial administration rapidly established and developed industrial, large-scale mining (LSM) during the first half of the twentieth century.

Yet the productive capacity of LSM was too slow and it eventually declined following independence and the nationalization of the colonial mining companies under President Mobutu. A combination of economic mismanagement, deteriorating infrastructure and external shocks (including the two Shaba wars, the closure of export routes to Angola, and price fluctuations on the world market) led to a rapid drop in industrial production from the 1970s onwards, falling close to zero by the mid-1990s.

During the same period, artisanal and small-scale mining (ASM), termed "artisanal mining" in this report, activity soared following its legalization in 1983. At the time, President Mobutu liberalized the sector to allow Congolese citizens to directly exploit and trade in minerals as a way to 'fend for themselves' during a time of economic hardship. Today, there is only one active industrial mining operation in the whole of North and South Kivu (in production since November 2011); the Twangiza gold mine, owned by the Canada-based multinational Banro (Geenen & Claessens, 2012). This one gold mine aside, all mineral production in the Kivu provinces occurs through artisanal mining.

The most recent audit report from the Extractive Industries Transparency Initiative for the year 2010 highlighted that in 2008 and 2009 the mineral trade from the Kivu provinces contributed over \$17 million to the state budget (ITIE-RDC, 2012). Given the vast amount of minerals smuggled out of the Kivu provinces with no contribution to the state budget, the real value of minerals produced in the region is, while difficult to quantify, significantly higher. For example, there are approximately 900 mining sites across the Kivu provinces.⁵ In addition, a recent report estimated three artisanal gold mining sites alone contribute \$14 million per month to the local economy (Kamundala Byemba 2012: 13).

⁴ Ben Radley, has written extensively on this topic in: Geenen & Radley, *'In the face of reform, what future for ASM in the eastern DRC?'*, Futures 54 (2013). Some of the content in Sections 1. and 2.d) is reproduced from this article, with the permission of the article's co-author, Sara Geenen.

⁵ Interview by team member Ben Radley with Ministry of Mines official, Bukavu, June 14, 2013.

There are a wide range of minerals mined in North Kivu and South Kivu including: gold; niobium; tantalite; cassiterite; beryl; tungsten; monzonite; platinum; sapphire; diamond; tourmaline; amethyst; quartz; and semi-precious gemstones (Pact, 2010). With the exception of Banro's industrial exploitation in South Kivu, all mining conducted in the Kivu provinces involves artisanal mining.

Artisanal mining broadly refers to mining practiced by individuals or communities on a non-industrial scale, using basic tools and equipment. In the 2002 DRC Mining Code, artisanal mining is defined as:

any activity by means of which a person of Congolese nationality carries out extraction and concentration of mineral substances using artisanal tools, methods and processes, within an artisanal exploitation area limited in terms of surface.⁶

While there is no singular international definition of artisanal mining and there are significant differences in techniques used around the world, some key features can be identified. Artisanal mining involves: the minimal use of machinery and a reliance on physical labour; the work is often carried out in relatively unregulated contexts characterized by hazardous conditions and a lack of safety measures and health and environmental protections; and artisanal mines often lack formal mining permits, titles or concessions. Many artisanal miners work seasonally and link income from mining with other livelihood activities, such as agriculture. And, it is very important to note, that in many communities – including those in the eastern DRC – artisanal mining makes important contributions to socio-economic development by providing employment and injecting money directly into the local economy.

Artisanal mining is widely viewed as one of the most important forms of employment in the DRC. Drawing on available data, the World Bank has estimated the number of people in the DRC directly or indirectly dependent on artisanal mining for their livelihood at between 8 and 10 million, or 14 to 16 percent of the total population (World Bank, 2010b). Available estimates for the number of artisanal miners in the Kivu provinces, taken from 2007 and 2010 respectively, put the figure between 200,000 and 350,000 (De Souza, 2007; Pact, 2010). Using the World Bank's methodology of allowing five dependents per artisanal miner, we can project that approximately one to 1.75 million people are dependent on artisanal mining for their livelihood in the Kivu provinces, or nine to 17 percent of the total population. Factoring in secondary economies and supply chains, the number of people directly and indirectly dependent on artisanal mining is even greater,

⁶ 2002 DRC Mining Code. WHAT ARTICLE?

making artisanal mining the most important livelihood strategy in the Kivu provinces.

b) Mining and conflict

There is no simple way to understand the waves of devastating conflict that have impacted the Congolese people and the DRC (and Zaire, as the country was known before 1997). Political violence in the DRC has led to the deaths of over 5.5 million people, making this the most deadly conflict since the Second World War.⁷ The vast majority of victims have been civilians who have suffered massacres, rape, torture and mass displacement on a scale that is difficult to comprehend.

The conflict is often viewed as beginning with what is known as the First Congo War (1996-1997), which involved many factors that remain unresolved today and continue to contribute to violence and instability. There are two significant causal factors for the war: the collapse of the Congolese state after decades of brutal rule by President Mobutu Sese Seko and the 1994 Rwandan genocide.

The authoritarian rule of President Mobutu began in 1965, half a decade after Belgium ended its colonial rule over the territory and following a number of internal political struggles. He ruled the country for thirty years, instituting multiple policies that encouraged corruption, hindered economic development and defined the state as largely ineffectual in providing for the Congolese people. However, as a strong Cold War ally of the U.S. and other Western powers, President Mobutu received substantial international support and played a key role in many regional proxy wars. However, by the 1990s the Congolese state, including its army and multiple security forces, was oscillating between weakness, failure and collapse, and had nearly fully imploded.

In 1994, the Rwandan genocide was committed. Over a period of one hundred days, a Hutu dominated government mobilized its supporters to kill over 800,000 people, the vast majority of whom were Tutsis. The killing was largely done with hand weapons and motivated no significant international response. The Hutu government was forced from power when a Tutsi insurgency, the Rwandan Patriotic Front (RFP), defeated its forces. This led to a mass exodus from Rwanda largely across the border into Zaire (as the DRC was then known).

Around 1.5 million Rwandans ended up settling in the eastern DRC (Reyntjens, 2009). These included Hutu genocidaires (those responsible for the genocide), Hutus fleeing feared retaliation and also some Tutsi swept up in the chaos and uncertainty of the moment. Hutu

⁷ It is important to note that nine out of ten of those who died in the conflict are believed to have perished from exposure, disease, malnutrition and other causes related to the combination of their poverty, displacement and profound vulnerability coupled with limited access to forms of medical aid and or other types of assistance.

militant elements who found themselves now based in the eastern DRC, including the extremist organization, the Interahamwe, were intent on launching a military offensive to return to power in Kigali, the capital city of Rwanda. When the Mobutu government began supporting and arming Hutu militias planning to pursue this, the newly established Tutsi-dominated Rwandan government, led by the former RPF guerrillas, responded with force.

In 1996 the Rwandan government helped form a new Congolese rebel movement, known as the Alliance of Democratic Forces for the Liberation of the Congo (AFDL). With Rwandan, Angolan and Ugandan military and financial support (significantly, prominent members of the RPF had fought alongside President Museveni of Uganda in the Ugandan Bush War that had brought him to power), the AFDL marched all the way from the eastern DRC to Kinshasa, facing minimal resistance from what was left of Mobutu's army. On 17 May 1997, AFDL's leader, Laurent-Désiré Kabila, declared himself President and renamed the country from Zaire to the Democratic Republic of the Congo.

Little more than a year later, the Second Congo War (1998-2003) began. It wasn't until this period of violence that minerals and mining in the eastern DRC (and in North and South Kivu in particular) began to play a significant role in the DRC conflict.

Deteriorating relations between the Rwandan government and the newly installed DRC government culminated in 1998 with Kabila ordering all Rwandan and Ugandan military forces to leave the DRC. In response, Rwanda and Uganda backed a new armed group, the Rally for Congolese Democracy (RCD), which launched a number of military offensives across the eastern DRC. What followed was more than four years of fighting that at its height involved nine African states (the DRC, Rwanda, Uganda, Burundi, Angola, Zimbabwe, Namibia, Chad, and Sudan) and around 20 armed groups. For this reason, this conflict is commonly referred to as the Great War of Africa.

Finally, in December 2002, all warring factions signed the Global and All Inclusive Agreement that outlined plans for a transitional government that would lead the way to legislative and presidential elections. These elections were eventually held in 2006, leading to the election of Joseph Kabila (son of Laurent-Désiré Kabila's, who was assassinated by one of his bodyguards in 2001) as President in the first multiparty elections in the country in 41 years.

Since this time, conflict in the eastern DRC has been characterized by relatively low-level skirmishes between FARDC and non-state armed groups, as well as between non-state armed groups themselves. Today, despite the recent surrender of the March 23 Movement (M23), more than 50 armed groups remain active in the

eastern DRC, ranging from small vigilante groups to larger-scale, more sophisticated rebel militias.⁸

Congo political analyst and former coordinator of the UN DRC Group of Experts, Jason Stearns, has compared the conflict in the DRC to a babushka doll, with conflicts sitting inside conflicts sitting inside conflicts.⁹ While the above timeline of key events gives a flavor of the national and regional levels to the conflict, it's important to also recognize the myriad conflicts being played out at the local level. Indeed, it has been argued that it is by focusing on the national and regional elements of the conflict at the expense of the local, that international efforts to resolve the conflict continue to fall short. These lower-level conflicts are based around local issues, such as who controls land or which customary chief is in power. Crucially, these conflicts are often divided along ethnic lines, and it is these ethnic divides which national and regional actors leverage and play upon when trying to advance their own aims and ambitions.

It was during the Second Congo War that forces from Rwanda and Uganda, along with numerous Congolese militia groups, established control of the production and trade in minerals throughout the Kivu provinces. Research in North Kivu and South Kivu has revealed how various rural militias replaced customary chiefs as references of authority during this period. This new dynamic took place in the context of state implosion, leading to a situation of mutual benefit between armed groups and local businessmen. While armed groups benefited from the presence of existing exploitation and trade routes to skim off profits, they also found themselves being deployed by local businessmen to protect their enterprises (Vlassenroot & Raeymaekers, 2005). There are many recorded instances, such as in one of the mining sites under study for this project, of armed groups being called into a mining area to provide protection to the mining community, in return for a share of the profits (interestingly, this goes against the common perception of armed groups as an unwanted presence in mining areas).

This dynamic continues to this day, and while quantitative data is hard to come by, it is clear that state and non-state armed groups alike have benefited from the mineral trade in the eastern DRC since around the time of the global coltan boom in 2001 (Aloys et al., 2010). Perhaps the most well-known and oft-cited example of this phenomenon is the Bisie mine in North Kivu, which until recently was responsible for around 70% of cassiterite production in the province, and was heavily militarized and controlled by the Congolese army.

The following quotation, taken from an IRC Advocacy Brief is representative of the style in which this trend has been reported by international NGOs and advocacy organizations:

⁸ See <http://christophvogel.net/2013/12/10/the-landscape-of-armed-groups-in-eastern-congo/>

⁹ See <http://www.obamaslaw.com/the-experts/jason-stearns/>

Congo is one of the cruelest conflict zones for women and girls in recent history. Tens of thousands of women and girls have been raped, sexually assaulted, attached and abducted in North and South Kivu, targeted by all armed groups with unparalleled levels of brutality. (IRC 2010: 1)

In a rather simplistic reduction of events, the case was made that armed groups were raping women for access to mineral resources. While reductionist as an analytical lens, it proved a highly effective advocacy tool, and the relationship between armed groups' control of mineral exploitation and the continuation of conflict achieved global attention, reaching as high as the United Nations Security Council (Marysse, 2005).

Around the same time, Paul Collier's 'greed and grievance' thesis was emerging and establishing itself among international policymakers working on complex emergencies. Collier's thesis was based on an analysis of seven quantitative indices (three to measure greed and four to measure grievance) and concluded that greed, and not grievance, was the overwhelming cause of modern conflict. This influential work, combined with the growing evidence documenting the exploitation of minerals by armed groups in the eastern DRC, led many to take the view that the conflict in the eastern DRC was nothing more than a bloody resource war, and should be treated as such.

As a result, terms such as 'blood mobiles' and 'conflict minerals' have seeped into the Western collective consciousness. But what exactly is a conflict mineral? Global Witness defines conflict resources as:

natural resources whose systematic exploitation and trade in a context of conflict contribute to, benefit from or result in the commission of serious violations of human rights, violations of international humanitarian law or violations amounting to crimes under international law.¹⁰

The more specific legal term 'conflict mineral' is defined in Section 1502 of the Dodd-Frank Wall Street Reform Consumer and Protection Act – which exclusively targets the eastern DRC and neighboring countries - as:

columbite-tantalite, also known as coltan (the metal ore from which tantalum is extracted); cassiterite (the metal ore from which tin is extracted); gold; wolframite (the metal ore from which tungsten is extracted); or their

¹⁰ See <http://www.globalwitness.org/campaigns/conflict>

derivatives; or any other mineral or its derivatives determined by the Secretary of State to be financing conflict in the Democratic Republic of the Congo or an adjoining country.¹¹

These four minerals are today commonly referred to as the Three T's (tantalum, tin, and tungsten) and gold. Tantalum is used primarily in the production of capacitors, which are found in a wide range of electronics products, including laptops, smartphones, and cameras. Tin is used to produce tin cans and as solder on electronic circuit boards. Tungsten is an extremely dense metal used for products requiring this property, such as anchors and dart tips. Gold is most commonly used in jewelry and electronics.

In July 2010, President Obama signed into law the above-mentioned Dodd-Frank Act, and in March 2013, Canada followed suit with similar legislation also targeting the Three T's and gold in the eastern DRC and neighboring countries. In June 2013, the European Commission held a public consultation on the issue, with a view to introducing similar legislation in 2014, albeit with an expected wider mandate moving beyond the geographic region of the African Great Lakes and the four minerals of the Three T's and gold.

Numerous critiques have been made of the assumed links between armed groups and mining, based on the fact that "it presumed a [...] very partial analysis of the causes and dynamics of conflict in the DRC: namely that because armed actors use money deriving from natural resources, they are fighting about natural resources" (Johnson, 2010). In reality, the root causes of the conflict may be found in long-standing grievances, political, economic and social marginalization and state failure, and only a small minority of Congolese conflicts are over natural resources¹². Moreover, minerals are not the only source of financing for armed groups, but just "one dimension of a wide repertoire of military economic practices" (Verweijen, 2013). Armed groups also rely on taxation of citizens, revenues collected at roadblocks and trade in cigarettes and drugs, charcoal, timber and bananas (Laudati, 2011). So cutting them off from this one source of revenue is unlikely to stop the violence.

Ultimately, minerals are not what the conflict was about when it began in 1996, nor are they what the conflict is about today. Thus, a narrow focus on attempting to cut armed groups off from mineral revenue is likely to meet with, at best, limited success in resolving the conflict in the region. Most likely, in the context of a war economy and in the absence of efforts to re-establish a legitimate Congolese state, it

¹¹ See <http://www.sec.gov/rules/final/2012/34-67716.pdf>

¹² Autesserre [17] notes that only 8 per cent of Congolese conflicts are estimated to be over natural resources.

will simply shift the violence and extortion into other economic sectors and onto other local, non-mining communities.

3. [INTERNATIONAL AND DOMESTIC LAW](#)

a) [Artisanal mining, regulation and law](#)

There are multiple laws, rules and legal regimes that apply to the artisanal mines of the eastern DRC. These include: international human rights law; international humanitarian law; general domestic DRC law, including the country's constitution and labor laws; and specific DRC laws dealing with mining. In addition, there are a variety of regulatory schemes and programs designed to address the trade in conflict minerals. Some of these are legally binding and others are not. And, some expressly involve the DRC government and others are external to the country's legal and governance systems. This complex, multi-layered set of laws, rules, guidelines and legal obligations provide a significant framework for understanding the human suffering associated with the artisanal mining industry as legal violations.

The most severely harmful acts linked to the industry, such as torture, rape and forced labor are widely prohibited by multiple international and domestic laws. The same is true of child labor, illegal detentions, denial of due process and other aspects of the lived experience of artisanal mining in the DRC that directly harm miners and others. In fact, these actions are so consistently and generally prohibited by international and domestic law that the question of their illegality is not an issue.

In addition, there are a number of domestic DRC laws that focus on mining including many provisions that focus specifically on artisanal mining. These rules outline a number of practices, often with great specificity such as limiting artisanal mining only to formally registered sites, allowing only miners with official identification cards to work in the industry and detailing multiple safety standards.

The point here is that there exist substantial, multiple overlapping laws and regulations that cover many, if not most, of the substantive harms experienced by miners and others in the artisanal mining industry. The issue, then, is not so much the need for more law, but rather the creation and management of protective systems that build on a foundation of fundamental rights to significantly improve the conditions in the industry.

The application of laws and regulations to the artisanal mining industry in the DRC suffers from at least two primary challenges. First, the fact that many widely practiced actions are illegal (as defined by multiple laws and legal regimes) does not, in itself, enable the use of these laws to address systematic violations. The system of artisanal mining is defined by widespread violations of the law at multiple levels and by multiple actors within the industry. In fact, violations of law are

the norm and not the exception throughout the region. Respect for technically applicable and potentially helpful rules and regulations is so widely and consistently violated as to question the efficacy and value of these laws.

Second, many of those responsible for harmful acts and violations are non-state actors such as armed groups, mine bosses, crew bosses, and traditional authorities. This means that the significance of legal prohibitions is complex in terms of how the law can be applied. And virtually all discussions of law, whether international or domestic, require an engagement with the capacity, solidity, reach and functionality of the DRC government. Given that one of the defining features of the eastern DRC is the inability of the state to effectively project its authority throughout the region, the significance and meaning of laws and regulations itself is a core question in the area.

Overall, it is clear that the current conditions within the artisanal mines of the eastern DRC present multiple, systematic violations of law and fundamental rights. The review which follows provides an overview of some of the core laws, regulations and legal regimes relevant to a discussion of these violations. The primary purpose of this review is to provide a foundation for discussing the documentation of the lived experience of legal violations and harms outlined by the project research, analysis, and recommendations. Rather than presenting a comprehensive review of the defining law in this area, this section highlights the rather substantial set of legal obligations relevant to this industry. The section reviews general laws, both international and domestic as well as specific DRC laws on artisanal mining, as well as an overview of conflict mineral policies and programs.

b) General laws dealing with human rights and labor

International human rights and labor law – The DRC is bound by multiple elements of international law of relevance to the artisanal mining industry. These include core components of international human rights law and the related field of international labor law and, as regards the nation's ongoing armed conflict, international humanitarian law (also known as the laws of war).¹³

¹³ One of the oldest forms of international law are the laws of war, also known as international humanitarian law and the law of armed conflict. In general, this body of law is defined by international customary law – that is, legal principles established over time by consistent state practice – and treaty law, most significantly defined by the Geneva Conventions and their optional protocols. International humanitarian law seeks to regulate warfare, the most destructive and harmful of activities and provides broad protections to civilians and others. As a rule, international humanitarian law limits actions not related to clear military objectives and, as such, provides guidance on the abuses committed by

The DRC has accepted the legal obligations of the two foundational human rights treaties (also known as “conventions” and “human rights instruments”) that define the international human rights system. These are the International Covenant for Civil and Political Rights (ICCPR) and the International Covenant for Economic, Social, and Cultural Rights (ICESCR). These treaties are sometimes linked with the Universal Declaration of Human Rights (UDHR) and termed “the international bill of human rights”. While the UDHR is not a binding treaty, it outlines core defining human rights principles issued by the United Nations in 1948 and provides a foundational understanding of these principles. The ICCPR and the ICESCR, on the other hand, are treaties that outline binding legal obligations for those nations, known as “states parties”, that have voluntarily accepted the treaties. The DRC is a state party to both the ICCPR and the ICESCR and, therefore, is legally obligated to abide by the provisions outlined in the two covenants.

Both the ICCPR and ICESCR were adopted by United Nations General Assembly in 1966 and “entered into force”, that is became legally binding on state parties, in 1976. It took nearly three decades for the international community to move from a commitment to creating a binding international human rights treaty to the point where the two principal treaties became a core part of international law. This history is very significant for understanding international human rights because it demonstrates both the necessary historical evolution of the field as well as a general sense of the growing legitimacy and coverage of human rights around the world. Currently, the ICCPR has 167 state parties and the ICESCR has 161 states parties.

Since the ICCPR and ICESCR entered into force, there has been a steady increase in the number of international human rights treaties as well as a general expansion in their scope, coverage and legitimacy. The DRC is also a state party to other key international human rights treaties of relevance to the artisanal mining industry and related abuses including: the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the Convention of the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention of the Rights of the Child (CRC).

armed groups against civilians within the artisanal mining industry. While technically the legal obligations within international humanitarian law are clearest as regards the behavior of states and official armies, many actions by non-state parties, which represent the vast majority of armed groups in the DRC, are also covered. These include prohibitions on torture, rape and sexual violence, forced labor and the intimidation and harming of civilians. While this study does not overtly engage this body of law in reference to the conditions in the artisanal mining industry, there are situations where its application is relevant.

Alongside these general human rights treaties, there are a number of international treaties that focus specifically on working conditions created by the International Labor Organization (ILO). The ILO, founded in 1919, is one of the oldest institutions within the modern human rights system. It was later incorporated into the UN and remains a core international institution for defining basic labor rights and working to promote social justice and improve worker protections around the world. The ILO focuses on the core role of work and labor rights in creating and enabling a more humane world.

While the ILO develops multiple standards and recommendations, it has a history of developing a series of core conventions. The DRC has signed on to all of these, including: the Right to Organize and Collective Bargaining Convention, 1949 (No. 98); the Forced Labor Convention, 1930 (No. 29); the Abolition of Forced Labor Convention, 1957 (No. 105); the Equal Remuneration Convention (No. 100); the Discrimination (Employment and Occupation) Convention, 1958 (No. 111); the Minimum Age Convention, 1973 (138); and the Worst Forms of Child Labor Convention, 1999 (No 182). These international labor rights treaties cover many key aspects of worker protections including prohibitions on forced labor, child labor, discrimination in the workforce as well as support for workers' rights to organize, be paid fairly, labor in safe conditions and otherwise be treated with respect.

In addition, the DRC participates in two regional African organizations of relevance to artisanal mining and other key human rights and labor protections. These are the African Union (AU) and the Southern African Development Community (SADC).

The AU is the regional body of African states and includes almost all African countries. Its fundamental structure and principles are defined in the African Charter on Human and Peoples' Rights which includes multiple basic labor and human rights protections including rights of association and assembly and rights to fair wages and safe working conditions, although these are not as detailed or comprehensive as in other international documents. AU states are also bound by the African Charter on the Rights and the Welfare of the Child which defines key labor rights for children and obligates member states to take action to prevent child labor.

The DRC is also a member of the Southern African Development Community (SADC) which is an inter-governmental organization whose mission is to improve social, economic, political, and security cooperation among 15 southern African states. The SADC outlines core rights issues in the Charter of Fundamental Social Rights. Some of the articles of the SADC Charter of Fundamental Social Rights of relevance to artisanal mining include: Article 5, which references Conventions of the International Labor Organization; Article 6 - Equal Treatment for Men and Women; Article 7 - Protection of Children and Young People; Article 11 - Improvement of Living and Working

Conditions; Article 12 - Protection of Health, Safety, and Environment; and Article 14 - Employment and Remuneration. Other SADC documents of relevance include the Protocol on Health and the Protocol on Mining.

Below is an overview of some select rights and state obligations relevant to the artisanal mining industry referenced in fundamental international human rights treaties and declarations. This illustrates the multiple, overlapping prohibitions outlined in different international legal instruments, highlighting the consistent and reinforcing nature of international law as regards these issues.

- Protections from slavery and forced labor
 - UDHR, Article 4; Article 23(1)
 - ICCPR, Article 8
 - ICESCR, Article 6
 - Forced Labor Convention, 1930 (No. 29)
 - Abolition of Forced Labor Convention, 1957 (No. 105)
- Protections from discrimination based on gender, race, nationality, political opinion, social origin or religion
 - UDHR, Article 7, Article 23(2)
 - ICCPR, Article 2, Article 26
 - ICESCR, Article 2
 - CEDAW
- Protections for free association, collective bargaining and the creation of labor unions
 - UDHR, Article 20; Article 23(4)
 - ICCPR, Article 22(1)
 - ICESCR, Article 8
 - ILO Convention 87, Articles 2, 3, 5 and 7
 - ILO Convention 98, Articles 1, 2 and 3
 - The Right to Organize and Collective Bargaining Convention, 1949 (No. 98):
 - The Freedom of Association and Protection of the Right to Organize Convention, 1949 (No. 87)
- Protections for fair wages and decent labor conditions, including a safe workplace
 - UDHR, Article 23; Article 24
 - ICESCR, Article 6, Article 7, Article 11
 - The Equal Remuneration Convention (No. 100):
 - Discrimination (Employment and Occupation) Convention, 1958 (No. 111)

- Protections against the use of child labor
 - ICCPR, check
 - ICESCR, Article 10
 - Minimum Age Convention, 1973 (138)
 - Worst Forms of Child Labor Convention, 1999 (No 182)
 - African Charter on the Rights and the Welfare of the Child: Article 15 -Child Labor

General DRC domestic law – The DRC’s constitution and key elements of national legislation provide multiple human rights and labor rights protections. The nation’s constitution outlines many key core human rights principles including basic due process rights and other core civil and political rights, the right to be free from discrimination and key foundational aspects of an orderly rights-based system of governance. In terms of specific rights widely violated in the artisanal mining industry, the DRC constitution bans slavery and forced labor. In addition, the constitution enshrines a number of core labor rights.¹⁴

The DRC also has substantive domestic laws on labor issues of relevance to the artisanal mining industry. Two laws of special relevance are the Labor Code¹⁵ and the National Law on Child Protection.¹⁶

The Labor Code provides for a series of regulations that structure the relationship between employers and workers in all fields. The law covers wage issues, including a minimum wage regulated by the Ministry of Labor. The law commonly references minimal conditions for labor contracts which, as key employment rights, should apply to employment relations that exist outside of formal arrangements, as is the norm in the artisanal mining industry. The law regulates what can be withheld from wages (a significant issue in the mines), legal working hours, required rest periods, holidays and other related issues. The law also regulates health and safety conditions and requires a set of minimal conditions to minimize accidents and protect worker safety.

In a related issue, the Child Protection Act restricts child labor. It states that no one younger than 16 can be formally employed and that children younger than the age of 15 may not work as apprentices. It also stipulates that children between the ages of 16 and 18 may not be employed in heavy labor and that those younger than 18 may not be employed for more than four hours a day.

¹⁴ “No one may be held in slavery or in a similar condition. No one may be subject to cruel, inhumane or degrading treatment...No one may be submitted to forced or compulsory labour.” DRC Constitution, Article 16.

¹⁵ DRC Act 015/2002.

¹⁶ DRC Act 09/2001.

These laws also specify the ways in which they will be enforced by state agents. And, they outline substantial penalties, including fines and prison sentences, for employers that violate the law.

c) Specific DRC laws and regulations on artisanal mining

The DRC has two specific domestic laws and related regulations dealing with mining in general, the 2002 Mining Code, and with the artisanal mining industry, the 2003 Mining Regulations. Both of these laws specifically address different elements of the artisanal mining industry and define a set of responsibilities and obligations for various state agents as well as for private individuals involved in operating artisanal mines and working within them. In addition, the specific elements of the Mining Code are clarified in the Artisanal Miners Code of Conduct.

2002 Mining Code – The Mining Code provides a number of specific provisions designed to introduce order and multiple forms of protection and supervision into the artisanal mining industry. These include many requirements about who can work as an artisanal miner including that artisanal miners must be Congolese adults¹⁷ and must hold an artisanal miner's card issued by the government.¹⁸ It also outlines multiple specific requirements for identifying and approving sites for legal artisanal mining including that artisanal mining can only take place in authorized locations that are approved by the Ministry of Mines¹⁹ and that these sites will be approved only if studies show that commercial exploitation is not viable.²⁰

The law also envisions a series of reviews of the impact of artisanal mining prior to approval including consultations with local authorities regarding plans for local community development²¹ and other similar processes that suggest that a legal artisanal mine can only be opened with significant substantive review of its impact. In addition, the Mining Code includes multiple provisions regarding safety, appropriate water use and environmental impact.²²

It is important to note that the many specific aspects of legal artisanal mining outlined in the 2002 Mining Code are at times in conflict with local rules and the various and competing supervisory authorities of different state and non-state bodies. If these laws were seriously and comprehensively applied, this could produce multiple problems in regulating the industry, but since the laws are largely not

¹⁷ Article 26, 2002 Mining Code.

¹⁸ Article 5, 2002 Mining Code.

¹⁹ Article 10, 2002 Mining Code.

²⁰ Article 104 and Article 109, 2002 Mining Code.

²¹ Article 69, 2002 Mining Code.

²² Article 112 and other provisions, 2002 Mining Code.

used, they become a complex and uncertain reference point for making sense of the actual rights of miners and others and the meaningful limitations on the industry. For example, state mining agents might claim the right do to one thing as enshrined in the Mining Code, while other state authorities might claim a different regulatory power while local traditional chiefs might claim other competing rights. What could result is a set of conflicting claims as our study found in Lemera (for example, to visit the mine site one must seek permission from state agents and representatives of traditional authorities).

2003 Mining Regulations – The 2003 Mining Regulations provide a number of specific rules that define proper legal management of mines and mining activities within the DRC. These regulations outline an additional set of rules that are supposed to build on the 2002 Mining Code and clarify the protections and rights of miners as well as the ways in which the state is responsible for ensuring regularity and order within the industry. These regulations include a set of legal limitations on the actions of miners including paperwork requirements such as signing an artisanal mining declaration, respecting customary rules and minimizing the environmental impact of mining.²³ The rules also: ban the use of explosives and mercury (which is widely employed to extract gold)²⁴; make it illegal to clear land with controlled burning and require miners to rehabilitate areas where mining is practiced²⁵; carefully dispose of garbage and human waste²⁶; suspend mining if prehistoric or historic remains are discovered²⁷; ensure that mining is not too noisy and occurs only during daylight hours to avoid disturbing residents²⁸; and avoid washing minerals within 20 meters of a water source to avoid contamination.²⁹

The Mining Regulations also include multiple provisions designed to protect the health and safety of miners including: banning tunnels that are deeper than 30 meters³⁰ and participation in training courses offered by the Ministry of Mines.³¹

These rules may appear highly reasonable and present a vision of artisanal mining that is carefully controlled and held to high standards of concern for the local community, the environment and the potential negative impact of the industry. The language of the rules suggests a strong, centralized state with multiple representatives that are

²³ Article 1, 2003 Mining Regulations.

²⁴ Article 2, 2003 Mining Regulations.

²⁵ Article 3, 2003 Mining Regulations.

²⁶ Article 4, 2003 Mining Regulations.

²⁷ Article 5, 2003 Mining Regulations.

²⁸ Article 8, 2003 Mining Regulations.

²⁹ Article 10, 2003 Mining Regulations.

³⁰ Article 9, 2003 Mining Regulations.

³¹ Article 12, 2003 Mining Regulations.

empowered to ensure that decent protective standards are the norm, which is not the case of governance in the DRC. Yet, this vision of regulation, which is partially implemented, is ill-suited to a country as vast and locally varied as the DRC. Our research revealed constant complaints on the part of local authorities that actions of various kinds could only be undertaken with permission from local centers of power such as Bukavu and Goma as well as reference to approvals, review and communication from the officials in Kinshasa, the capital. Even local mining cooperatives (now mandatory) must have their paperwork officially recognized and approved in Kinshasa, creating multiple problems and inefficiencies.

d) DRC Mining institutions and mining governance

The Congolese Ministry of Mines is responsible for ensuring overall management of the artisanal mining sector, and contains a number of agencies and technical services charged with specific objectives and responsibilities within this general remit, as defined by the country's 2002 Mining Code (referenced above). These include:

- The National Minister of Mines;
- The Provincial Authority of Mines;
- The Mining Registry (CAMI);
- The Geology Directorate;
- The Directorate of Mines;
- The Department in Charge of the Protection of the Mining Environment;
- The Technical Unit for Coordination and Planning of Mining (CTCPM);
- The Service for Assistance and Organization of Artisanal and Small-Scale Mining (SAESSCAM) and;
- The Centre for Evaluation, Expertise, and Certification (CEEC).

Often, there is unnecessary duplication and overlapping of roles between these distinct agencies. For example, three separate agencies are required for an Artisanal Exploitation Zone (AEZ) to be opened: the National Minister of Mines to create the AEZ, the Mining Registry to register the AEZ in the national database, and finally the Geology Directorate to officially open the AEZ. The inability of these three agencies to coordinate and open officially recognized AEZ's in North Kivu and South Kivu has been cited by Congolese researchers working

on ASM in the eastern DRC as a major obstacle to improving working security of miners in the region.³²

Of these agencies, SAESSCAM is perhaps the most important in terms of its on-the-ground role, as the government authority vested with the responsibility for organizing and supervising the artisanal mining sector. It has risen to prominence in recent years as a result of the numerous recent initiatives to regulate and formalize the mining sector described in section 1.b) above. Its key objectives include: providing training and technical assistance to improve the capacity of those working in ASM; monitoring the flow of materials produced by ASM from the mine to the point of sale and; ensuring that the correct taxes from ASM are collected for the state (Pact, 2010).

However, SAESSCAM has been the focus of much criticism due to its lack of financial, logistical, or technical capacity to fulfil its mandate and – of even greater cause for concern - its direct implication in violating the rights of artisanal miners, evidence corroborated by the research findings of this report (discussed in further detail in section 4. below). While these criticisms have in the past led to recommendations for reform of SAESSCAM, its role as another level of extortion and harassment over miners has become so embedded that a recent report by Southern Africa Resource Watch (2012) called for SAESSCAM to be totally restructured or closed down.

The example of SAESSCAM is reflective of a broader structural challenge experienced by all the agencies and technical services operating within the Ministry of Mines (and the Congolese government in the eastern DRC at large). Under-resourced, they find themselves unable to effectively fulfil their mandates, which require significant logistical capacity to traverse the vast distances between and to mine sites and significant technical capacity to effectively carry out their work once there. Underpaid or unpaid, the agents who are in the field find themselves needing to resort to alternative strategies to survive, often including extortion or theft from the very miners they are there to support and work with.

These are not the only problems that workers at the bottom of the ASM supply chain have to contend with. While ASM is legalized and therefore to a certain extent protected by the Congolese Mining Code (2002), Mining Regulations (2003) and Investment Code (2002), the lack of officially recognized Artisanal Exploitation Zones (AEZs) leaves miners and other workers vulnerable to extortion and harassment from authorities, as under state law working outside of an AEZ is illegal. Of the few AEZs that do exist, information on the ground regarding their existence is scarce. Furthermore, within these zones, artisanal miners must apply for a ‘carte d’exploitant artisanal’, an official

³² See <http://kivumining.org/2012/06/19/what-needs-to-be-done-to-improve-the-working-conditions-and-quality-of-life-for-those-working-at-or-near-the-bottom-of-the-mineral-supply-chain-in-the-kivus/>

authorization card to mine, which must be renewed each year. However, the process for obtaining this card is centralized and bureaucratic, needing to be signed off at the level of the Provincial Governor. This poses serious problems for many miners, adding to their vulnerability, as they are often illiterate and many days travel from the provincial capital (and, even were they able to travel to the provincial capital, there is no guarantee of being able to obtain the required authorization card within a realistic timeframe).

One area which held initial promise for improving the organization of miners and governance of the ASM sector was the formation of mining cooperatives. Under the Mining Regulations, all artisanal miners wanting to operate in an AEZ must form under a mining cooperative. However, on the ground these cooperatives rarely seem to function in the common understanding of the word, that is, as an organization owned and run jointly by its members for an equitable distribution of any profits or benefits. Instead, they are often established and run by powerful families or business networks, offering no real benefits to its members. Board members are unelected and unaccountable, and there is little semblance of democratic functioning or impression that the organization speaks for and serves the interest of its members. The fact that the cooperatives must be officially registered and recognized by authorities in Kinshasa is likely a contributing factor here, as local miners rarely have the required means to avoid the cost of this long journey, placing it beyond their reach, and making them dependent upon those with the money to finance such a trip.

So while in law, the idea of forming mining cooperatives to support and protect miners seemed to hold potential for positive change, the top-down measure appears in many cases to have had the reverse effect, creating another layer of harassment, extortion, and control of workers. This is symptomatic of a wider problem with efforts to regulate and formalize ASM in the context of a failed state; until government agencies and services are adequately paid and resourced to do their work and there is functioning rule of law, any efforts on paper to regulate or formalize the sector or improve the lot of workers are likely, at best, to fall short, and at worst, to impact negatively on the lived experiences of miners and others working at the bottom of the mineral supply chain.

According to DRC law, there are multiple state agencies that are responsible for ensuring that the 2002 Mining Code, the 2003 Mining Regulations, and the multiple other domestic laws and rules are effectively enforced. These institutions include: the national office of the Ministry of Mines which is responsible for approving legal artisanal mining zones and issuing authorization for processing minerals extracted from these mines; the Provincial Mining Authority that issues miner's cards; the Mining Registry that is responsible for creating a national database of legal artisanal areas which cannot conflict with industrial mining operations; the Geology Directorate that provides

technical advice used to open and close legal artisanal mining operations; the Mining Directorate that is responsible for gathering data in artisanal and other mining and controls and inspects artisanal mines among other responsibilities; and the Provincial Governor whose office is responsible for managing the system of formal cards that allow individual traders to work in the artisanal mining industry, buying and selling minerals.

In addition, the 2002 Mining Code outlines a number of other state agencies with various responsibilities. These include: the *Cellule Technique de Coordination et de Planification Miniere* (CTCPM) which collects statistics on artisanal mining and publishes material on the industry and also develops improved technical approaches to artisanal extraction; and the *Centre d’Evaluation, d’Expertise et de Certification* (CEEC) which certifies and evaluates minerals and precious stones, provides technical support to traders and processors and certifies export taxes. And, the law creates the previously mentioned SAEESCAM.

e) Efforts to regulate conflict minerals

Over the past several years, multiple actors within the DRC and the international community have created a series of different systems and initiatives to address the issue of conflict minerals in the country. These mechanisms vary in terms of their legal status and regulatory demands. They are not necessarily integrated and many are too new to be effectively assessed in terms of whether or not they will have a positive long-term impact. Most of these initiatives are based on the concepts of due diligence, certification, and traceability (Verbruggen, Francq, & Cuvelier, 2011)³³.

Due diligence requires companies to develop and implement internal systems and procedures to determine the precise origin of minerals being purchased from known conflict areas. The initiative has gained momentum over recent years, most significantly from section 1502 of the Dodd-Frank Act, U.S. legislation passed in July 2010 demanding due diligence from American companies sourcing minerals from the DRC (discussed in further detail below). Certification and traceability respond to the demands of due diligence by making it possible for final buyers on the international market to determine whether minerals have been sourced from conflict or non-conflict areas. Certification traces the supply-chain while encompassing a consideration of safety, health and environmental factors, and traceability ‘bags and tags’ minerals sourced from approved ‘non-conflict’ mining areas on site before transporting them to the trade counters of Bukavu and Goma.

³³ The referenced report provides a good, critical overview of national and international conflict mineral initiatives in the DRC.

Such traceability and certification systems have been proposed and piloted by the industry itself. Tin smelters represented by the International Tin Research Institute (ITRI) have proposed a supply chain initiative called iTSCi or ITRI Tin Supply Chain initiative. The German government supported an initiative through the Federal Bureau of Geo-Sciences and Natural Resources (BGR) (Naehrer, 2010). Other projects were launched by a private company Met Trak (CENADEP, 2012) and by the International Conference on the Great Lakes Region (ICGLR) (Blore & Smillie, 2010).

In 2009 the Congolese government published a 'handbook for traceability', detailing all the steps to be taken, all actors and services involved in tracing the origins of minerals, certifying and taxing them, and even the fixed 'routes' minerals should take from the mine to the export office, passing through 'centres de négoce' or centralized trading points³⁴. In accordance with the handbook, a number of mining sites have been assessed as being 'green', 'yellow' or 'red', depending on the level of conflict and the presence of practices like child labour or human rights abuses.

But apart from a few small steps that have been taken, most procedures foreseen in the handbook or in the Mining Code are not yet operational. The impact of the technical certification and traceability initiatives is also very limited. Early evidence shows that they have failed to make significant progress in achieving their goals and have even negatively impacted ASM and the wider economy, as they have provoked a de facto ban on minerals from the Kivu provinces (Carisch 2012; Geenen & Radley 2013; Johnson 2013; Triest 2012).

What follows is a brief overview of the most significant national, regional and international responses to the issue of conflict minerals, which are useful to consider alongside the international and domestic laws discussed above:

DRC Government – Possibly the most significant effort by the DRC government to regulate conflict minerals, in terms of its impact, was the mining ban announced by the Congolese Ministry of Mines on September 11, 2010. From then until March 10, 2011 all mining activities in North Kivu, South Kivu and Maniema provinces were suspended.

The decree specifically stated that it was intended to address "the link between the illegal exploitation and the illicit trade of mineral resources, the proliferation and tracking of arms by mafia and armed groups, and the recurrent insecurity" in these regions.

Many voiced concerns about feasibility issues given the capacity level and low inclination of Congolese state institutions to effectively

³⁴ Ministère des Mines, Ministère des Finances (2009) Manuel des procédures de traçabilité des produits miniers, de l'extraction à l'exportation.

implement the ban. Furthermore, from early on, there were reports of the involvement of the Congolese military in illegal mining activities, such as taking control of mining operations, forced labor and acting as paid security for artisanal miners who continued to work despite the ban. The Enough Project (2011) stated that “mining has not stopped and the ban has resulted in a windfall for the commanders of armed groups, mainly Congolese army officers, some of whom have hijacked trucks full of minerals”.

The UN Group of Experts (UNGoE) reported that this had severe affects leading to the collapse of many artisanal mining and mineral trade structures and nearly halting registered exports of tin, tantalum and tungsten in the region. Smuggling in the Kivus, which had previously been declining, increased significantly as evidenced by sharp increases in export figures from Uganda, Rwanda and Burundi. Exceptionally high world market prices during this period mitigated the impact but simultaneously had a negative effect on transparency, regulatory and rights protection initiatives.

Another initiative launched by the Congolese government known as STAREC (Programme de Stabilisation et de Reconstruction des Zones sortant des conflits armés) aims to increase state authority over the sector and supervision of humanitarian and socio-economic components and prevent the involvement of armed groups in the trade.

Part of the plan, launched in late 2009, was to set up five “Centres de négoce”, or mineral trading centers, in the eastern DRC. In collaboration with the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO) the purpose of these centers was to create spaces where those working in the mining sector could do business safely and under the authority of state agents to create a stronger, more profitable, market environment with respected and regulated legal mechanisms. MONUSCO’s role in this endeavor was to help with the training of Congolese authorities and rehabilitation of key infrastructure components such as roads and centers.

However, implementation has been slow. Four trading centers have been built but none are operational and the evaluation and certification of surrounding mining sites has not yet been completed. There are also ongoing legal issues surrounding privately owned mining concessions and difficulty regulating the legality and permitting of artisanal mining.

International Conference on the Great Lakes Region (ICGLR) – Established in 2004, ICGLR includes eleven governments (Angola, Burundi, Central African Republic, Republic of Congo, Democratic Republic of Congo, Kenya, Uganda, Rwanda, Sudan, Tanzania, and Zambia) and is the highest level regional organization addressing conflict minerals and security issues in eastern DRC.

The Regional Initiative on Natural Resources (RINR), also known as the Lusaka Declaration, was signed by the heads of all member states in December 2010. The RINR sets out a legal certification mechanism for natural resources in the Great Lakes Region. It enumerates six tools intended to address major resource related issues:

1. Regional Certification Mechanism (RCM) for cassiterite, wolframite, coltan and gold;
2. Harmonization of national legislation;
3. Formalization of the artisanal mining sector;
4. A regional database on mineral flows;
5. Promotion of the Extractive Industries Transparency Initiative (EITI) and;
6. A whistle-blowing mechanism.

The main component of the RINR is the RCM, which certifies the conduct of due diligence procedures throughout the supply chain and appropriate management of conflict risks. Implemented by individual ICGLR member states, the RCM has been praised for its regional buy-in (particularly important given the role of Rwanda and Uganda in activities in eastern DRC) and compatibility with other mechanisms such as the ITRI/iTSCI, BGR/CTC and OECD guidelines.

However, there have been challenges with implementation such as gathering reliable statistics and lack of progress in areas such as harmonization of legislation and formalization of mining. Furthermore, the ICGLR has largely failed to address the complexities and lack of control over trade in gold from eastern DRC.

OECD Guidelines – In 2011, the OECD published the *Due Diligence Guidance on Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas* in an effort to formalize and promote a process for States and other actors involved in activities relating to conflict minerals in the interest of greater respect for human rights and breaking the link between mining and conflict. Heavily influenced by the recommendations of the UN Group of Experts on the Democratic Republic of the Congo (UNGoE), this publication offered a framework for companies that supply or use tin, tantalum, tungsten and gold (3TG) sourced from conflict-affected or high-risk areas. The Guidance follows a five-step approach:

1. Establish strong company management systems;
2. Identify and assess risks in the supply chain;
3. Design and implement a strategy to respond to identified risks;

4. Carry out independent third-party audit of supply chain due diligence at identified points of the supply chain;
5. Report on supply chain due diligence.

The OECD guidelines have several strengths. The process by which they were conceived has been praised for its inclusivity and has gained support from key stakeholders. Notably, these stakeholders include both significant governmental actors (such as the International Conference of the Great Lakes Region) and significant industry organizations (such as the International Tin Research Institute and Global E-Sustainability Initiative), as well as international political bodies.

Furthermore, the OECD guidelines have succeeded in creating a respected basis for due diligence of the supply chain of minerals from eastern DRC that targets risks related to conflict financing, forced and compulsory labor, the worst forms of child labor and other gross human rights violations. It provides actors in the supply-chain with a detailed and well-defined set of guidelines. The guidelines provide specifics on issues such as risk mitigation in the supply-chain of tin, tantalum and tungsten (3Ts) and due diligence measures by actors throughout the supply chain. For example, local mineral exporters are required to gather and disclose information on all payments of any kind made along the supply-chain; on the mine of mineral origin; on the identity of all intermediaries; on the locations where minerals are traded and processed; and on transportation routes. It is also recommended that this information is regularly checked by a team on the ground.

However, there are areas of weakness in the guidelines. First and foremost, they are voluntary and entail no legal obligations for actors in the supply-chain. Companies that commit violations can be brought before the OECD National Contact Points (NCPs) in their home countries but the procedure results only in a statement, which is not legally binding and results in no punitive measures. Another issue is that the guidelines pose compliance challenges to actors in the upstream (mines to smelters/refiners) supply-chain. To address this, the OECD calls upon donors to support supply-chain monitoring capacity and improve governance systems more broadly. Overcoming the first weakness, in February 2012 the Congolese government adopted OECD due diligence guidelines into national law. In May 2012, the government drew on this new law to suspend the work of two trading houses (or *comptoirs*) in North Kivu due to their exportation of conflict minerals (although other, more opportunistic factors may have been at play).

To evaluate the implementation and effectiveness of the guidelines, the OECD Secretariat conducted a pilot project between 2011 and 2013. The subsequent reports published in 2013 concluded that “both, upstream and downstream companies have made significant improvements in their understanding of the conflict mineral issue as well as in the implementation of the first steps of the OECD

Guidance.” However, it noted that these companies’ activities were also influenced by Section 1502 of the Dodd-Frank Act and the SEC’s adoption of rules on conflict minerals in August 2012. And, significantly, that a common response to anti-conflict mineral efforts is to avoid sourcing minerals from the region.

Dodd-Frank³⁵ – Passed in July 2010 and primarily concerning financial reform in the US, the Dodd-Frank Wall Street Reform and Consumer Protection Act also contained three provisions, and one in particular, pertaining to mining in the DRC. Section 1502 of the Act specifically addresses mining activities in the DRC “helping to finance conflict characterized by extreme levels of violence ... particularly sexual- and gender-based violence, and contributing to an emergency humanitarian situation therein.” This provision requires all companies traded and listed on the US stock exchange whose products contain “conflicts minerals” (defined as: coltan (columbite-tantalite), cassiterite, gold or wolframite) to publicly disclose whether these minerals originate from the DRC or an adjoining country.

Companies must substantiate claims that conflict minerals do not originate from this region or, in the event that they do, must include a “Conflict Minerals Report” (CMR) in their annual SEC report. Often called a “name and shame” bill these reports must also be made public on companies’ websites.

The CMR must contain an extensive report on due diligence measures taken “on the source and chain of custody of such minerals ... and a description of the products manufactured or contracted to be manufactured that are not DRC conflict free ... [and] the facilities used to process the conflict minerals, the country of origin of the conflict minerals, and the efforts to determine the minor location of origin with the greatest possible specificity.” Furthermore, these due diligence efforts are subjected to a private sector audit.

One criticism of Section 1502 is that it lacks specificity in key areas. For example, the SEC was tasked with addressing this but due to the complexity and the multitude of actors the law concerns (in addition to the entire supply-chain it also effects manufactures from numerous industries such as the medical, automotive and jewelry industries, amongst others) clarification was delayed until after the law went into effect.

Other concerns were voiced by numerous different actors involved. Companies expressed concerns about compliance costs and competitive disadvantages in the international market. European corporate representatives have also been impacted by a new wave of

³⁵ For a full and recent evaluation of the impact of the Dodd-Frank Act, see Manhart & Schleicher (2013) *Conflict minerals: An evaluation of the Dodd-Frank Act and other resource-related measures*, Öko-Institut e. V., Freiburg.

requests relating to conflict minerals and their origin due to the SEC reporting requirements. Stakeholders from the eastern DRC complained that they were not adequately consulted and that they were already putting in place a traceability mechanism. The ICGLR, for example, argued that its tracking system reaches the points of export in DRC and is planned to be extended in the future.

One of the most significant issues with the implications of the Dodd-Frank Act concerns its impact on the economy in eastern DRC. Some argue that the public disclosure requirement of the Act, which allows products containing no conflict minerals to be labeled “DRC conflict free” gives companies using any type of mineral from the region a negative public image and thereby discourages the use of materials from the Great Lakes Region.

For example, in March 2011 the Malaysia Smelting Cooperation made the decision to stop purchasing minerals from the eastern DRC following the passing of the Dodd-Frank Act, prolonging the negative socio-economic impact of the presidential suspension and demonstrating the challenge posed by legislation requiring supply chain systems that were not yet in place. As one report stated:

While the general goal of reducing the options and pathways of conflict financing is widely supported, it is often difficult for companies to distinguish between those sources linked to conflict and those from legitimate mining. To be on the safe side, it is much easier for many companies to follow a strategy of avoiding all materials that are somehow mined and traded under unclear conditions. (Manhart and Schleicher 2013: 33)

Assessments of the impact of the Dodd-Frank Act on security issues is debated. While the UNGoE points to positive results in improving security, particularly in remote mining areas, others note negative socio-economic consequences as well as an increase in smuggling. Another significant argument is that the resulting decrease in economic opportunities actually fuelled conflict by incentivizing young people to join militias. As always in the DRC, reliable and comprehensive data is hard to come by, and there are a number of significant variables to consider, making it difficult to quantify the true extent of the impact. However, what is clear is that official exports of the 3TGs plummeted in 2010 and 2011, and remain significantly below pre-2010 levels at the time of publication.

The first SEC reports are due to be submitted by companies in May 2014. Time will tell whether the Act will be reduced to an annual tick-box exercise conducted by companies, or hold up as a substantive legal requirement leading to real change both in industry practice and on the ground.

4. THE PROJECT

a) Overview of the Kazisafi/RITEWORK project

The Kazisafi/RITEWORK project is designed to strengthen respect for worker rights in the ASM sector in the South Kivu and North Kivu provinces in the eastern DRC. The project had three main objectives:

Objective One - Invest in the organizational and technical capacity of worker rights organizations to enable Congolese organizations to raise awareness of relevant laws and to provide workers with sustainable access to a range of protection and support services;

Objective Two - Provide socio-economic support and alternative livelihood opportunities to exploited workers, addressing the immediate needs of these workers and facilitate livelihood diversification over the longer term; and

Objective Three - Strengthen systems to promote identification and remediation of labor law violations in the ASM sector at the local, regional, and international levels.

Over two years, Kazisafi/RITEWORK reached thousands of workers in DRC with its educational, training, capacity building and rights protection efforts.

b) Key project partners

The larger Kazisafi/RITEWORK project, as well as the specific documentation initiative detailed here, are based on close coordination between HA and its three Congolese local partners. The documentation project was directed by Professor Daniel Rothenberg of Arizona State University and implemented by HA staff and the staff of ARAL, BEST and AJEDIKA. Some research and writing for the final report was with the assistance of additional consultants. Below is a brief description of the key institutional partners.

Heartland Alliance for Human Needs and Human Rights (HA)

– HA's mission is to protect human rights and respond to the human needs of vulnerable populations, especially the poor, isolated, and displaced, through comprehensive services defined by sensitivity to place and context and oriented towards solutions that lead to a more just global society. The organization was founded in 1888 in Chicago. Over the years, it has developed to become one of the largest social services organizations in the Midwest with a focus on housing, health care, economic security, and legal protections, including running one of the most significant immigrant legal rights programs as well as one of

the best known torture victim treatment centers. As HA expanded its work internationally, it created Heartland Alliance International (HAI) which is also a service-based human rights organization that has become an industry leader in protecting victims of human trafficking; aiding women survivors of discrimination and violence; supporting sexual minorities; aiding survivors of trauma and torture; and serving the needs of the displaced, particularly indigenous and other ethnic and cultural minorities that have suffered systematic violence and discrimination.

Arche d'Alliance (ARAL) – Founded in 2000, ARAL focuses on legal advocacy, community mediation and conflict resolution and has a presence in all of the main mining areas in South Kivu. ARAL monitors cases of worker exploitation in mining areas, providing direct legal assistance to workers, and advocating at the local, national and international levels for greater respect for worker rights in extractive industries.

Association des Jeunes pour le Développement Intégré-Kalundu (AJEDIKA) – AJEDIKA was formed in 1988 by youth from Kalundu, South Kivu with the aim of advancing the rights of young people. In 2005, AJEDIKA expanded its mandate to also cover worker rights, as a result of the exposure it had to these issues working with exploited children in the region's mining areas. Since this time, to advance labor rights in the region AJEDIKA has specialized in conducting outreach and sensitization work, advocacy, and providing economic assistance and reintegration support.

Bureau d'Etudes Scientifiques et Technique (BEST) – Founded in 1988, B.E.S.T. is a local organization with an excellent reputation for conducting high quality research, and with specialist expertise in the mining regions within proximity of Bukavu, specifically in Shabunda, Nzibira and Nyabibwe in the north of South Kivu. The Director of BEST, Reverend Didier de Failly, is a leading international expert on artisanal mining in the eastern DRC.

Arizona State University (ASU) – ASU is the largest university in the U.S. in terms of the number of students. It has developed a new model for the American research university, creating an institution that is committed to interdisciplinarity, entrepreneurship, sustainability and global reach. This project specifically integrates the School of Politics and Global Studies (SPGS) and Sandra Day O'Connor College of Law's Center for Law and Global Affairs (CLGA). SPGS is an integrated, multi-disciplinary program linking nationally recognized political scientists, sociologists and others with a focus on connecting academic rigor with practical applications. The CLGA supports and inspires research, education and practice regarding emerging forms of transnational governance that extend beyond the traditional paradigms

of international law with a commitment to linking ASU with field-based research and action throughout the world. The director of this project is on faculty at the SPGS and is the founding executive director of the CLGA.

c) Overview of mine research sites

The Kazisafi/RITEWORK project focused the majority of its research in six mining site locations:

Katogota – Situated at a distance of six kilometers from Katogota, the mining site known as Bulinga was discovered relatively recently, in 2009. This discovery was made by prospectors from Mwenga, who were invited to explore the area by the traditional leaders. The mining site follows very similar management procedures as the site at Lemera. There is a group of elders, nominated by the local king that acts under the king's authority. Also nearby the site are the localities of Lubarika and Luvungi, forming along with Katogota a triangle around Bulinga.

Bulinga is a cassiterite mine, home to a significant amount of activity given the site's relatively small size. This can be explained by the fact that it is located approximately 50 kilometers south of Bukavu along a good road, therefore making it extremely easy to transport the minerals for sale to the trading houses in the provincial capital of South Kivu.

However, access to water is a serious problem in Bulinga. Washing the minerals is a laborious process, involving the construction of irrigation tunnels to channel the water that comes through the mining tunnels themselves. The site has been running at maximum capacity since its discovery in 2009 and 46 separate tunnels have already been constructed. Recently, many of the miners have begun complaining about the difficulty of finding new mineral veins to follow. The site is the smallest of all the sites selected for the project, with only approximately 100 miners working in the tunnels.

There are some reports that a certain amount of the cassiterite produced at Bulinga is smuggled into Burundi for sale to the international market. There is also an ongoing power struggle in the area concerning the traditional authorities, which have frequent changes in leadership. This in turn impacts the lives of the miners and the wider community, with many miners reporting poor local administration as a result of the unstable traditional power structure.

Lemera – Lemera is a cassiterite mining site located 87 kilometers north-west of Uvira in the Ruzizi plain, South Kivu. The site can be accessed in a 4x4 vehicle, requiring around a one hour drive on fairly rough terrain after leaving the main road that runs from Uvira to Bukavu. In August 2012, miners reported making between 15,000-

20,000 Congolese francs (\$17-22) per day. By August 2013 however, the daily income had reportedly dropped to between \$3 and \$5.

The mining site at Lamera is divided into two main areas, Mugerero and Kagunga. Mugerero was discovered in 2006 following a prospection undertaken by a team on the invitation of the local 'mwami', or king. Kagunga was discovered towards the end of 2008, at which point artisanal mining activity in Lamera began to move away from Mugerero and towards Kagunga, due in large part to the increasing frequency of pit collapses at Mugerero, often leading to the deaths of dozens of miners at a time.

More recently however, a number of miners are beginning to return to the Mugerero to explore the possibility of constructing safer tunnels to start production once again. This is due in part to increased technical knowledge in the area regarding pit construction, and in part to an ever-growing fissure at the top of the Kagunga mining site, leading many to fear that soon the hillside will collapse, taking all the mining tunnels with it.

Approximately 350 miners are active in Lamera, who, as of the time of writing, have yet to organize themselves under a mining cooperative. Instead, the site continues to be run by a committee of elders, nominated by the local king. State services - namely SAESSCAM and the Mining Police - operate alongside these traditional authorities.

This overlap of state services with traditional authorities has created a degree of tension and led to a number of conflicts, as experienced by the report's authors during visits to the site in 2012 and 2013. For example, the local king gave one mining pit to the local auto-defense group in return for the security the group provides the village. This decision was contested by the state services that see all the pits as being the property of the government.

The security situation in Lamera is frequently threatened by the activities of various Mai-Mai groups operating in the area, which often intimidate and harass the local community and exhort money or minerals from the miners. The auto-defense groups exist and operate alongside, and often in collaboration with, the Congolese national army, in dispelling the threats presented by the Mai-Mai groups.

Artisanal mining activity is the main livelihood activity in Lamera, which prior to the discovery of cassiterite in 2006 was – according to several local sources - a small, sleepy village. Today, it has developed into a larger settlement, which a thriving local market and a number of other small business activities existing alongside and thanks to mining activity.

Mukela – The gold mining site of Mukela is located in Fizi territory in South Kivu province, 19 kilometers west of Fizi Centre, 55 kilometers south-west of Baraka, and 149 kilometers south-west of Uvira. The mine has existed since colonial times. Some of the elder

habitants of Mukela still talk today about their work with the Belgians on the site in the 1950s.

Today, Mukela is an important area, both as a passageway for those travelling to and from Minemebwe and for the buying and selling of the gold that is mined in the region. The mining site is composed of eleven different areas, of which the most active are Ma Boutique, Kasonge, Etats-Unis, Ka Wako, Itota, Lumanya, and Kcanga.

According to the President of the Business Federation of Congo, who resides in Mukela, there are approximately 179 tunnels across the whole site, managed by approximately 150 tunnel owners. In May 2013, 420 miners were registered with various cooperatives, the most important of which are SOCOMIDEFI and COMICAF. Following the recent work of Heartland Alliance in the area, a certain number of miners are in the process of organizing themselves under a new cooperative to better serve their own interests.

At the time of writing, mining has been temporarily suspended in the area under the order of the local authorities. Two principal reasons have been given for this temporary suspension. Firstly, as it's the rainy season and mining in Mukela takes place alongside two main rivers (Mukela and Kasonge), pit collapses are frequent and so it's in the best interests of the miners not to work during this period.

Secondly, according to a FARDC officer in the 113th regiment based in Mukela, the temporary suspension is also to prevent the nocturnal activities of Mai Mai Yakutumba in the area. Throughout November 2013, there were a number of clashes between FARDC and Mai Mai Yakutumba. Consequently, the decision was taken to suspend mining activities while FARDC works to secure the area.

Mai Mai Aleluya are another non-state armed group active in the area, and with direct interests in the gold site of Mukela. As in the other mining sites selected for this study, non-state armed groups and the national army operate alongside specialist state services (including SAESSCAM and the mining police) and traditional authorities.

Mukungwe – Mukungwe is located on the Bukavu-Luhwinja road, passing through Burhinyi. The gold mining site is situated around eight kilometers outside of the commercial center of Mukungwe. Unlike the commercial centers in the other mining sites studied, the gold mined near Mukungwe is not sold in Mukungwe. The traditional commercial hubs for gold are found at nearby Butuza or Mugogo, where people prefer to do their business.

Most people who visit the Mukungwe gold mining site do not spend the night there, due primarily to the tension exists between the traditional authorities and the fact that the area has been home to the Mai-Mai group Mudundu 40 during the numerous rebellions that have characterized South Kivu during previous decades. Mukungwe's commercial center is a very poor area when compared with the other

areas of study, and depends on the economic activity of nearby Butuza for its survival.

In contrast, the mining site itself appears better equipped than the other mining sites selected for this study. There are numerous generators and water pump machines dotted around the site that appear to be more powerful and of higher quality than in the other sites studied. To access the site, you must cross Chizi village before stopping at an even smaller village inhabited by the Rubango and Chunu families. Here, one must stop and request authorization to access the mining site.

The final destination of the gold mined in Mukungwe is unclear. Many claim that the gold produced here is sold fraudulently, after being smuggled into Burundi or Rwanda. Gold mining is the main livelihood in the area, dating back many decades. There is little agriculture in the area, and some small businesses operating in and near the mining site itself to provide for the basic needs of the miners.

The site is composed of three distinct areas, known as 'centers' by the miners. Each center is headed up by a boss, and each boss belongs to one of the site's two ruling families, the title holders of the land. Each boss closely tracks all the people living in and coming in and out of his center, including visitors, and submits daily reports to the ruling families. The ruling families have a surveillance committee to closely monitor all of the site's workers. This surveillance committee operates with complete impunity and, as with the bosses of each center, reports directly to the ruling families.

Each center is home to a number of small shops, restaurants, guesthouses, as well as some small livestock. There are also a number of brothels in each center. The majority of the miners in Mukungwe come from Bukavu, Walungu and Mwenga. The artisanal miners from Mwenga have perhaps the strongest presence in the area, and many of these include miners who used to work for the Congolese mining company Sominki in the old gold mine at Kamituga. They bring with them a specialist expertise in constructing safe and well-functioning galleries, which perhaps in part explains the higher level of equipment observed in this area when compared with others.

The miners work in long, horizontal galleries of up to 100 miners, and report working day and night. The miners consist of sub-groups of specialists, including machinists (responsible for the operation and maintenance of generators, motor-pumps and other small-scale machinery used in the process of artisanal mineral exploitation), purifiers, diggers, blasters (who prepare and set-up explosives), and chemical specialists.

Through this chain of workers, the mineral is extracted and then taken by porters' to be washed and treated. From here, the minerals leave the site, again through porters, and disappear up the supply chain on their way through the middle-men to the trading houses and international markets.

The site is characterized by ownership conflicts dating back more than a decade. Initially this conflict was between the ruling families and the traditional authorities. Today, these two camps find themselves up against a third-party with competing claims to their own; the Canadian mining company, BANRO. According to the mining company, the site belongs to one of its concessions.

In response to these conflicts and to better defend their interests, the ruling families called in the national army. Deployed under the pretext of providing security to the workers against potential attacks from armed rebel groups, in reality the soldiers appear to extort a percentage of all the minerals coming out of the mine while also claiming a right to be provided by the workers with a daily ration for their survival.

The presence of specialized state services such as SAESSCAM or the mining police is minimal, with no fixed offices in the area. This is one explanatory factor for the high level of smuggling across borders associated with Mukungwe. However, the recent attention on the legality and transparency of the mining sector in the eastern DRC appears to have resulted in increased state attention to the area. There are also tentative signs that the miners are being to organize under a cooperative, but at the time of writing, no mining cooperative exists in the area.

Nyabibwe – The commercial center of Nyabibwe is situated approximately 100 kilometers north of Bukavu on the main road between Bukavu and Goma, in the territory of Kalehe, South-Kivu. The main mining site in the area is a cassiterite mine called Kalimbi, situated around five kilometers south of Nyabibwe. As of February 2013, the mining cooperatives in Nyabibwe registered 1,294 miners working at the site (Matthysen & Montejano, 2013), originating from areas all over North and South Kivu. Being close to the Rwandan border, Kinyarwanda is the most commonly heard language in the mining site, followed by Kihavu and Kiswahili.

The Kalimbi mining site is operational 24 hours a day, and is divided into two main areas, known as T20 and Koweit. T20 is home to the tunnel known locally as ‘maternity’, due to the considerable amount of cassiterite it produces. Most of the miners work in this tunnel, which has only one entry point, and approximately twenty galleries inside. ‘Maternity’ produced around five tons of cassiterite per day before the Presidential suspension in September 2010. Koweit is situated beneath T20, alongside the main road as you approach Nyabibwe from the south.

There are two mining cooperatives in Kalimbi, with a short but troubled history: Coopérative minière pour le Bien-être des Communautés de Kalehe (COMBECKA) and Coopérative Minière de Kalimbi (COMIKA). Since their inception in 2010, the two cooperatives have continually contested control of the different tunnels

that make up Kalimbi. The situation has improved recently, and most miners working in Kalimbi are affiliated with one or the other of the cooperatives, with very few working independently. Another source of tension stems from the Canadian mining company Shamika Resources' exploration permit, signed in 2007 by the Ministry of Mines.

The site is arguably, alongside Bisie in North Kivu, the most well-known mining site among members of the international community. In recent years the government and national army have regained control of the area, and it has become the pilot site for a number of conflict mineral initiatives aimed at cleaning up the mineral supply chain and improving transparency (discussed in Section 2. above). Its selection for these initiatives is no doubt due in large part to its proximity to Bukavu and Goma. A return visit by vehicle along safe and reasonably well-constructed roads is possible in one day, making it a relatively accessible location in comparison to the vast majority of mining sites in the Kivu provinces, which are found in far more isolated areas.

While significant attention has been paid to the establishment of conflict mineral initiatives at Kalimbi, the author's two site visits carried out in June and December of 2013 found 'Maternity' to be closed due to flooding. During both visits, the machine to evacuate water was broken down, with several sources confirming that no one could get together the \$1,000 needed to repair the machine and draw the water out. As a result, hundreds of miners were not going to work, and were either struggling to make ends meet, or had moved on to mine elsewhere. That such a relatively small sum (considering the potential daily production value of the site) takes more than several weeks to find should be of concern to local and international stakeholders working to ensure the success of current pilot initiatives.

Nevertheless, the site began producing 'conflict-free' cassiterite in 2012 and – despite concerns raised from advocacy organizations such as Global Witness or FARDC's continued involvement in mineral trade from the area – continues to do so to this day. The success or otherwise of the pilot schemes being implemented in Nyabibwe will determine the extent to which these initiatives are expanded to cover other artisanal mining areas located in the Kivu provinces.

Nzibira – Nzibira is a mining area home to wolfram, gold and cassiterite located in the administrative territory of Walungu, approximately 75 kilometers west of Bukavu in South Kivu, on the Bukavu-Shabunda road. It is relatively easily accessible, with public transport frequently going to and from Nzibira from Bukavu on a daily basis.

The two commercial centers of Nzibira – Kankinda and Chaminyagu – are well known in Bukavu, as many people from the provincial capital have at one point or another spent some time in

Nzibira due to the high level of mineral activity in the area. The main languages spoken in the area are Mashi and Kiswahili.

Alongside the mineral production of Nzibira there are a number of thriving small businesses (owned on the whole by elderly men), as well as numerous restaurants and bars run and staffed by women, many of whom also work as prostitutes. There is a low level of agricultural activity, but the main economic activity in the area is mining.

Most miners in Nzibira are young men, and the vast majority are from Bukavu, Walungu town, and the neighboring villages of Nzibira. There is a lack of technical expertise relating to pit construction, even though many of them work in extremely deep mines. There are also a number of women working in the area with the miners, who wait to transport quartz stones from the mines to the town center to break them down.

There are several different mining sites at Nzibira, of which the main ones are Zola-Zola, Chaminyagu, Muhinga, Mushangi, and Bushushu. The largest site, Zola-Zola, is an old mining site that was previously exploited by the industrial mining company Sominki. Some of the remains of this industrial exploitation can still be seen today, such as the old iron pipes that carried water to where the minerals were washed.

Today, the Canadian mining company BANRO is in the process of exploring the Zola-Zola site, to the concern of the artisanal miners working there. A level of confusion exists as to why a gold mining company would explore a cassiterite mine. Zola-Zola itself is divided into two main sites, Zola and D23. The mines flood frequently and there is a general lack of adequate machinery to withdraw the water, meaning the mines are often closed for weeks at a time.

Before the Presidential suspension in September 2010, Zola-Zola alone was producing around three tons of cassiterite per day. Since the suspension and the passing of Section 1502 of the Dodd-Frank Act (see Section 2. above), mining activity has greatly reduced in the area, with many miners either returning home or moving to other mining sites, particularly into gold which has been less impacted by the wave of recent anti-conflict mineral initiatives.

At the time of writing, the only authorized mining cooperative in Nzibira is the Coopérative Minière des Exploitants Artisanaux (COMIDEA). In early 2012, many miners accused the cooperative's committee of only serving its own interests rather than the interests of the miners. They said they would prefer to establish their own cooperative to represent their own needs (this is a complicated, bureaucratic and expensive process, requiring approval of documentation in Kinshasa). However, a year later, the situation appeared to have much improved, with COMIDEA having grown greatly in popularity due to its increased commitment to improving the working conditions and daily lives of miners.

The area experiences frequent insecurity, resulting from clashes between FARDC and Raia Mutomboki. In early 2013, these clashes caused the majority of the civilian population to stay at home. Lately, the situation appears to have calmed down with the increased presence of FARDC in the area leading to the retreat of Raia Mutomboki into the neighboring villages. Each day, the miners have to put aside a certain amount of money or cassiterite to pay a military 'ration' to the FARDC unit operating in the area. Traditional authorities are also present in the area, and have a certain level of influence and control over the mining sector in Nzibira.

Finally, it is worth noting that Nzibira has been chosen as one of the several areas where a 'center de negoce', or trading center, is to be created as part of a region-wide effort to tackle mineral fraud and improve transparency in the sector. However, this center has yet to become operational in any real sense.

d) Methodology and data collection

The documentation initiative within the Kazisafi/RITEWORK project is designed to provide insight into the lived experience of miners and others as a means of effectively understanding the nature of human rights violations within the industry.

The project involves four interrelated actions implemented over an 18-month period. The first element of the project involved consultations with HA staff and the staff of ARAL, BEST and AJEDIKA as a means of developing a context appropriate system of data collection and documentation. This was followed by methodology training of relevant Kazisafi/RITEWORK staff, HA staff and those working with local partners. The goal here was to ensure that the information collected would be consistent and focused, allowing for the effective documentation of the experiences of miners and others. As described below, the methodology focuses on collecting information on case studies of violations experienced by miners and others in the six field sites as well as collecting oral histories from the field that provide broad documentation of how the artisanal mining system operates in the areas studied.

The third component of the project involves ongoing data collection and analysis activities. This process defined the majority of the project activities. These actions were integrated with the other Kazisafi/RITEWORK actions and built on close integration between Congolese partners and miners and mining communities in the project sites. The data collection was based on multiple site visits to all areas and careful review and consultation processes. In general, data collection was managed with limited serious obstacles, largely because the local partner organizations have, over time, established effective relations with mining communities. The quality of data ranged in relation to the miners presenting their oral histories and specific

complaints. In many cases, the material gathered is rich with detail and insight and, in other cases, the material is less conclusive in terms of facts and adequate review of context and actions. However, as a general rule, the project researchers were able to collect high quality data on multiple cases from multiple individuals in all of the sites studied.

The final stage in the process involves reviewing and analyzing the case study and oral history data. The documentation and analysis decouples the data from identifying information regarding those interviewed in the field. The process links the creation of a database of key violations from the case study data with narrative reviews of the violations documented. The database references violations, responsible parties, sites, core biographical data (age, gender, etc.) and allows for analysis by site and other criteria. The process also includes collating and editing the oral histories for review and publication. And, the analysis links this fieldwork data with a review of existing laws and regulations. Overall, the process has enabled a set of conclusions and recommendations that are grounded in detailed field data that documents the lived experience of miners and others in the key areas studied within the eastern DRC.

Case Studies – The collection of case studies was managed by the HA staff in coordination with the project director. The material was collected by HA staff and staff from ARAL, BEST and AJEDIKA during their multiple field site visits. The visits were consistent, but also limited in duration and number by the logistical difficulties of the distance and time required to access the mines, as the well as insecurity which occasionally prevented travel to the areas. As a result, visits to the sites shifted between weekly, bi-monthly and monthly. The overall regularity of field data collection allowed for broad-based data gathering from multiple sources that provide a useful overview of the experience of labor and human rights violations in the mines.

While the initial project envisioned collecting 50 to 75 case studies, the project team collected 133 case studies. In part this is the result of the successful training of local partners as well as a sign of their capacity to effectively conduct field research in a challenging environment. Of these case studies, 133 were male and five female. The ages of those interviewed range from 14 to 61, with a median age of 27. In total, 100 of the case studies were recorded in South Kivu by AJEDIKA and BEST, and 33 in North Kivu, by ARAL.

The case studies range in complexity and detail. Where possible, the research teams followed up on specific allegations to consult multiple witnesses and also to determine from interviews with crew bosses, mine bosses, mine police and others the specifics of what occurred.

The overall goal of the case study methodology is to allow miners and others to present what they view as core violations and issues of concern. These do not always meet the definition of legal

violations, yet they appropriately express issues of concern to miners and others working in the industry. In fact, to a large degree, miners and others appear relatively unfamiliar with their technical legal rights and the specific provisions of defining international and domestic law. Many are unaware of the various rules and regulations that are meant to apply and focus instead on what they perceive to be as injustices and acts of repression and harm.

Below is a brief narrative overview of four different case studies collected by the project. The initials presented are proxies for actual names and the term “XX” references cases where miners preferred anonymity. A brief review of this material helps illustrate the value of this methodology and the diversity and complexity of the claims made by those working in the artisanal mining industry (a more detailed analysis of this material is found in Section 5).

BD and M went to explore the possibility of working in a tunnel where mining had been forbidden due to its close proximity to the main road. During their trip, they were discovered by a FARDC military unit on patrol. Instead of moving the miners on, the unit agreed that BD & M could work there throughout the night under the soldiers’ security, in return for an equal share of the mineral production in the morning. When morning came, the miners stayed back in the tunnel, hoping that the soldiers would get bored and go away. However, the soldiers waited, and became impatient. Fed up with waiting, the soldiers gathered grass and wood to fill the tunnel entrance, and then set the entrance on fire. Rather than suffocate from the fumes, the miners came out of the tunnel. While M managed to escape, BD was arrested and thrown in the military jail. Five days later, he paid a \$45 fine for his release.³⁶

Over the course of twenty years of mining experience, XX had saved enough money to buy a machine to draw water out of the mines, when they began to flood during the rainy season. He rented this machine out to different mining sites in the Walungu territory for \$10 a day. In June 2013, a mining boss from Muhinga called XX and asked to rent his machine, and XX duly agreed. However, the noise made by the machine was overheard by soldiers from the non-state armed group Raia Mutomboki, who were based nearby. The soldiers descended on the site and confiscated the machine. The mining boss who had rented the machine bought the

³⁶ VC_BE_2013_7_BDDRC & VC_BE_2013_7_MDRC

armed men drinks and tried to talk them into returning it to him, but in vain. The armed men demanded to speak with the owner, and when XX arrived, they tried to intimidate him and threaten him with arrest. Eventually, XX was made to pay the armed men \$20 to get his machine back. Following the incident, miners at Muhinga were too scared to use machines in case the incident repeated itself. As a result, the mine flooded, and at the time of writing is no longer operational.³⁷

On the night of July 28th 2013, 26-year-old KB was working in the Koweit mine as usual. He went into the mine to dig for cassiterite. However, he didn't come out as expected, so a number of his colleagues went into the tunnel he was working in to look for him. A little way in, they noticed that the tunnel had collapsed and was blocked. They worked quickly to clear the blockage, and in so doing, found KB's body. He had died from a mining collapse, as confirmed by SAESSCAM, the mining cooperatives, and the police. He left behind him his wife and two children.³⁸

XX wanted to join some other women in the area, who had begun work sifting through the abandoned rock produced by miners to try and find some cassiterite and earn a little money. To be able to access the abandoned rock, the pit boss told XX she would have to sleep with him. When XX started working, the pit boss then imposed a tax on the small quantities of cassiterite that she managed to find. The local authorities also impose a special tax on all women working in the mining site, simply because they are women. Women who refuse to pay this tax are summoned in front of the traditional authorities and sometimes even the military. XX is then only allowed to sell the little cassiterite that remains after she's paid these taxes to one specific buyer, unlike the men. This buyer – or 'shashuleur' – doesn't use scales to weigh the minerals, but instead simply estimates and buys at the price he wants; often well under what the women report to be the true weight and value of the cassiterite.³⁹

³⁷ VC_BE_2013_8_XXDRC1

³⁸ VC_BE_2013_7_KBDRC

³⁹ VC_BE_2012_7B_XXDRC1

One key value of this approach is that it highlights the ways in which miners and others accept some modes of harm as so commonplace as to not constitute issues worth bringing to the attention of investigators while other issues are routinely discussed. Above all, the case studies reveal a clear moral sensibility among miners, porters, washers and others that link their lived experience with their understandings of acts of harm and issues that should be addressed to improve their lives.

Oral Histories – The project methodology also included gathering a number of detailed oral histories as a means of effectively documenting the lived experience of miners and others. The initial work plan envisioned 10 detailed final oral histories, but the project team collected 51, revealing both the effective nature of the training and the skills of the researchers.

The oral history methodology allows the experiences of miners and others to be contextualized within a larger life history. This helps to explain how Congolese end up in the mining industry. The tales tend to link miners, porters and washers with a variety of life stories.

Some describe how issues in their personal life led them to mining, like a young man fleeing the angry father of his high school girlfriend:

I studied at the Institute of Lwiro. In 2004, during my second year, I got a girl from Katana pregnant.

The girl's father tried to have me put in the prison.

So, I quit school and fled.

I went to Walikale where I managed a bar. I would travel back and forth from Walikale to Bukavu to purchase drinks.

Then, in 2007, I became a miner.⁴⁰

Or, a man who loved school but had to go to work so his brother could proceed with his studies:

I was born in Lubona in Walungu. My father and my mother had nine children, five boys and four girls. My father was a carpenter and then a butcher, slaughtering cows in the market. He died in 1999, but my mother is still alive, although she is very old.

⁴⁰ OH_BE_2013_4_CNDRC

I loved school. When I finished my third year of secondary school, my brother was in college. My parents said they didn't have enough money to pay for my brother and me. They asked me to leave school to give my brother a chance. Unfortunately he didn't live long after he completed his studies.⁴¹

Or, a woman who goes to the mines after her unfaithful husband leaves her with young children to care for:

I am Mwenga from the area of Burega. I was a small business owner until I married my husband who is from Nzibira.

After a while, my husband was unfaithful.

He made me suffer. Four years later, he abandoned me.

I had no way to earn a living and support my four children.

So, eight months ago, I went to the Zola Zola mine. I went to work hard and to see if laboring in the mines would help me to survive in this difficult situation.⁴²

The oral history methodology also allows for a detailed review of how the artisanal mining industry operates, from the ways in which miners are charged for money and minerals:

I am only able to sell a portion of the cassiterite that I take out of the mines.

Let me explain.

When I take a bag from the tunnel, I first have to give a tenth to the mine owner. Out of what is left, I give fifty percent to the crew boss. That leaves me with half of what I mined. This I have to sell to my crew boss at a very low price. I sell him my cassiterite for \$3 per kilogram. But, I know that they sell the cassiterite for \$5 per kilogram. So, I lose \$2 per kilogram. Then, from what he pays me for the minerals, he deducts expenses like food and the costs of the bags we use. Sometimes

⁴¹ OH_BE_2013_5_MMDRC

⁴² OH_HA_2012_11_MFDRC2

the crew boss invents expenses I don't understand that add up to a lot of money.

In the end, I hardly make \$50.

So, after I have some drinks with my friends, all the money is gone.

Then, I go back into the mines.⁴³

As well as distinctions in the experience by ethnicity:

The Hutus are the crew bosses. This is why the miners that are treated the best are the Hutus. They are given the easiest jobs.

It is the Bahavu people who do the hardest work: transporting, crushing, and washing the minerals. When the tunnels are dirty, it is the Bahavu that are required by the crew bosses to clear out the garbage. Three times, I refused to do this. So, the crew boss refused to let me to enter the mine to work.⁴⁴

And, also marked differences in how women are treated, particularly given systematic gender discrimination and multiple cases of sexual violence and coercion:

Women do not have permission to enter the mine because they say that if they did, the mine would become barren. So, women are porters and washers. We get up very early in the morning to go bring the bags to the tunnels. The miners fill the bags with minerals. Then, the women take them to the river to wash.⁴⁵

This methodology also allows for an engagement with how miners and others experience their work and lives in a manner that extends beyond a recitation of violations. While artisanal mining is a difficult, if not brutal, industry, the tens if not hundreds of thousands working in the field have lives of no less complexity and dignity than others with the good fortune to have the opportunity to labor in less dangerous fields. Listening to the voices of miners and others deepens the understanding of what the field is really like:

⁴³ OH_BE_2013_4_CNDRC

⁴⁴ Ibid.

⁴⁵ OH_HA_2012_11_MFDRC2

Sometimes we enter the mines on our knees or on our stomachs. We don't enter standing up. We call ourselves "mice" because we move around in all sorts of positions, on our backs, even on our heads.⁴⁶

At times, the oral histories provide striking specificity and detail of the actual mining experience:

This work is hard, but I am used to it. We enter the tunnels, crawling on our bellies. We carry things attached to our hips. It is hard. I have scars on my belly and sides. We dig on our bellies, kneeling or sitting. But, since there are no other jobs, I keep mining.

I work in a tunnel called Koweit. It is different from other sites. When you get inside, you find a lot of tunnels. Then, you have to choose the tunnel which you think has the most minerals. Inside, there is not enough air. If the pump is down, you can't even enter the tunnel. I would rather starve above ground than die of asphyxiation in a tunnel. And, sometimes, the tunnel fills up with the water. Imagine what it is like when the water reaches up to your waist. When this happens, it is really hard to work. When this happens, we can go as much as three days without working. The crew bosses ask us to drain the water from the tunnel. After we do that, we start working again.

Some of my friends have died. This happens when the tunnels collapse. Then, miners can't find their way back and they die.

I work all night long. In the morning, I come up with what I have found. During the day, I put the minerals in the sun and rest. After I sell the minerals, I pay my debts and take half of the money for my wife to meet the needs of the family.⁴⁷

And, it is also true as regards the self-reflection and emotional and intellectual engagement with work and life that defines miners just as it does countless others. Given the brutality of the industry and the fact that research on mining is commonly conducted by those unfamiliar with making a living from such difficult labor, these issues are often lost

⁴⁶ OH_BR_2013_12_XXDRC1_Eng

⁴⁷ Ibid

in research reports on the field. Yet, miners and others speak in a manner that broadens the sense of engagement with the complexity of their work:

But, I persevere.

The mines are very dangerous, but we enter without fear.

Because of the challenges we face, one becomes wise.

Experience in the mines brings wisdom.⁴⁸

Overall, the methodology helps broaden the documentation of violations in the artisanal mining industry so these are seen as intimately integrated into the complex lives of Congolese working in the field.

5. FINDINGS

a) Understanding the experience of artisanal mining

Artisanal mining is difficult and dangerous work. Every aspect of the labor is physically demanding – digging into the earth, crawling down small tunnels, the passage illuminated by a flashlight strapped to one's head, carrying heavy bags of rock and minerals, crushing stones by hand, washing, sorting, packing and stacking. What allows the industry to function based as it is on grueling hand labor is the fact that compensation is relatively low in relation to the value of the minerals extracted. Yet, woven into the system are multiple players – crew bosses, the military, various state agents, traditional authorities, armed groups, buyers and middlemen – each of whom extract a portion of the value of the minerals extracted as they move their way from the hills of the eastern DRC to sites of export, both legal and illegal, and eventually to smelters and then into multiple supply chains leading to products consumed around the world.

As outlined above, there is substantive DRC legislation that provides protections for fundamental human rights as well as specific laws that regulate the artisanal mining industry. There are also a number of general state institutions designed, at least in theory, to provide for general social order including the FARDC and national and provincial police as well as mining-specific bodies, such as mining police, SAESSCAM and cooperatives all of whom are supposed to protect miners rights and ensure that the industry is appropriately regulated.

Despite the rather significant legal and institutional mechanisms in the DRC to regulate artisanal mining, the industry is complexly

⁴⁸ OH_BR_2013_12_XXDRC1_Eng

informal. That is, the actual operation of mines and the ways in which mining supports multiple players within the region exists largely outside of the rule of law. This does not mean that the laws have no significance or that state institutions have no authority, but rather that the ways in which minerals are extracted, separated from rock, sold, transported, re-sold, further processed and eventually exported operates in a manner that enables, if not encourages, practices that are prohibited by existing regulations. And, many of these practices represent serious human rights violations and abuses.

Above all, while the specifics of mine control and associated violations vary significantly from one mine site to another and from one region to another, the overall system is structured such that the multiple parties that wield power each manage to extract value from the industry.

In many cases, the efforts of these empowered entities exist in competition with each other and in other cases, they work in tandem. Yet, the system is varied enough that while in one mine the FARDC may work closely with mine police and mine bosses, in another mine, these forces may be in conflict with each other. Or, the relations may be even more fluid such that particular cases of power struggles shift over time or in relation to a specific situation, such that the FARDC or national police may fully support one mine boss and not another in one case and not in another or may act differently in terms of what they demand in certain circumstances and not others.

State authorities commonly work alongside, in tandem and in a complexly coordinated fashion with various non-state actors, such as traditional authorities. This is even sometimes true with various armed groups that operate throughout the region, although clearly documenting this type of collusion is difficult.

Unpacking the processes through which empowered actors in the mining system collaborate is challenging. This is largely because the particular nature of these relations, while ubiquitous within the system, varies widely in its specific function. The particular roles, powers, monetary significance and mechanisms of control shift by mine site, region, the presence of state and non-state armed groups, infrastructure and other factors. Sometimes these processes reveal unifying patterns and other times they suggest a high level of improvisation.

When listening to miners and others working in and around the mines, one hears multiple tales of abuse, including some quite horrific stories. Yet, one also learns of a complex relation between these individuals to the rather intricate system of mineral extraction, transport and sale. That is, miners and others experience the work from within the context of their social reality. Ultimately, working in mining is a livelihood strategy. This means that Congolese who dig in the mines, carry minerals, wash them and separate rock from minerals seek to support themselves and their families as best as they can. Assisting these workers requires embracing this fact, which is sometimes lost in the many excellent studies of the industry and may also be absent in the

broadier policies designed to minimize harm and human suffering within the artisanal mines.

Some miners and mine related workers see their labor as a net positive in terms of providing for their needs and the needs of their families. Others see the industry and their experiences as one of constant victimization within a system that is brutal and predatory. One reason why it is useful to listen to the miners is that both of these perspectives are correct. The abuses are real, yet are experienced complexly by different individuals in various ways, but always as filtered through local understanding. Our project suggests that the voices of these individuals, and their opinions and ideas, are equally valid, regardless of how they judge themselves and the worlds in which they struggle to survive.

Often when reading reports on artisanal mining by international organizations, the presentation of violence, abuse and excess is so constant that the reader is left wondering why anyone would ever work in a mine in North or South Kivu. In fact, many thousands, perhaps hundreds of thousands (De Souza, 2007; Pact, 2010), do this work. This does not invalidate the stories of extraordinary abuse that characterize the industry. Nor does it suggest that there is any inaccuracy in these reports. Rather, listening to the voices of miners suggests a more complex picture in which the experiences of different miners and others working in the field vary widely and that while severe acts of violence are common in some areas they are not so common in other areas.

This helps explain why people work in the mines. It is not only desperation and work conducted at the point of a gun; but rather a form of survival in a part of the world that has been ravaged by conflict, endemic poverty and political instability. Yet, within this world, individual Congolese, their families and their communities struggle to do the best they can, often choosing to work in mines because this appears to them, and may turn out to be, the best choice.

As one miner explains, “It is true that this is stressful, painful and hard work, but it pays a bit if you have good luck.”⁴⁹ Another miner describes how his work has allowed him to seek to offset the terrible economic losses of his family as a result of the conflict:

My parents are poor. My father had cows and goats, but due to war, he lost everything. With what I earn in the mines, I have already bought my father a cow. With God’s help, I intend to buy him more. And, through this work, I can pay the school fees for my two little brothers. I am improving my life. I have some land in Nabibwe. I will get married and build a house, like some of my colleagues. The city of Nyabibwe is based on

⁴⁹ OH_AJ_2013_4_BJDRC

mining and there are many miners who have built houses here.⁵⁰

A 45 year-old miner with eight children left a stable job as a teacher to labor in the mines, seeing this shift as a significant financial benefit:

This is an activity that makes money. When I was teaching I couldn't imagine holding a \$100 bill. Today, I have saved over \$1000. Before, my wife had never worn a dress that cost more than \$10, but now I can buy her one that costs \$50 . . . Six of my children study with three going to college. I have no difficulty paying their school fees or expenses. I praise God for leading me to this job.⁵¹

While the benefits and even pleasures of mining are rarely discussed in the literature, it is important to consider the positive aspects of mining from the perspective of workers, including both the capacity to earn more than in other lines of work and the excitement of finding minerals, the pride in the work and the potential of possibly doing quite well:

No, I cannot give up the profession of creuseur. When one finds minerals, there is great joy! But one cannot forget that luck plays a big role in this work.⁵²

In addition, within the context of the eastern DRC, there are cases where mining, dangerous as it is, is safer and more certain than other jobs, especially those involving security and work with various state and non-state armed groups:

After secondary school, I took a course in how to be a security guard. I was worried because the war was everywhere. There were bandits and rebels and I realized that I needed to do something constructive.

After my training, I came to Nyabibwe where I worked for a few years as a security guard. I had to intervene in difficult situations when there were problems. At certain points during the height of the war, the risks were simply too great. This was around 2006 or 2007.

⁵⁰ OH_BE_2013_4B_MMDRC

⁵¹ OH_BE_2013_3B_MBDRC

⁵² OH_BE_2013_3B_ECDRC

I met a Hutu friend who told me about the work in the mines. He was a digger himself.

So, I resigned from my job and I started digging in the mines.⁵³

Many miners are former combatants some of whom fought with multiple armed groups, including those who switched sides. For some, the often violent and informal nature of mining seems linked to their years of life amidst conflict. For example a 31-year-old miner who was orphaned by the conflict, lived in the street and later became a child soldier describes his embrace of a common culture of the mines which links sudden infusions of cash with widespread drinking, prostitution and petty crime. He is known as “Ruthless”, in part from his years as a brutal combatant and, “because I do not like to joke. The one who plays with me, I might even kill.”⁵⁴ The mines provide him with access to money, even if it is uncertain and its benefits fleeting:

I work day and night to win either \$5 or \$10, or even nothing. But there are days when I earn \$50 to \$ 200. When I have my money, I’m in the center of Nzibira to drink with my friends.

Yes, everyone loves women, even you I’m sure . . . Here we have only beer and women . . .

Excuse me, because I have to go to work, because today I must find money to have beer tomorrow.⁵⁵

Alongside those who see mining as appealing, or at least the best of available livelihood options, there are many who find the industry demeaning, dangerous, violent and a form of work to avoid. Many Congolese try artisanal mining and then leave to seek other forms of earning a living. Some are injured, at times severely. Some suffer terrible acts of violence, such as beatings, forced labor and sexual assault. Others are damaged by the hardships and abuse of the industry, or leave humiliated and angry.

Given the difficulty of artisanal mining, many wish they had different options, “What I need is to find another way to earn a living and provide for my family, something without so much risk.”⁵⁶

What is clear is that artisanal mining is a difficult form of labor defined by constant competition and struggle. It is fundamentally

⁵³ OH_BR_2013_12_XXDRC1_Eng

⁵⁴ OH_BE_2013_3B_LBDRC

⁵⁵ Ibid.

⁵⁶ OH_AJ_2013_3_MDRC

uncertain and marked by multiple risks and abuses. Miners and other mine workers are often abused and continually reminded of their vulnerability and the ongoing competition between everyone in the industry, “It’s a world of fish. The big fish eat the little fish.”⁵⁷

b) Multiple authorities

The lives of miners, porters, washers, crushers, sorters and others are positioned within a complex and divergent network of different authorities. By authorities here, we mean those that effectively manage power within the actual context of mineral extraction in the region. These include formal representatives of state power – FARDC, mining police, national police, local government officials, SAESSCAM staff and others – as well as those who wield power outside of state structures including traditional chiefs, non-state armed groups, crew bosses, mine bosses, mine owners and others.

While legally there is a significant distinction between state and non-state actors, especially as regards the process of implementing laws and regulations and adhering to a commitment to enabling the rule of law, within the actual artisanal mining industry and from the experience of miners and others, what matters more is who wields power where they live and work, rather than the source of their authority. In fact, one might argue that a key characteristic of artisanal mining in the eastern DRC is that it depends to a great deal on the management of power, but within a context in which there are multiple, distinct, competing and cooperating systems of authority where the state and its agents are clearly not in full control.

Among the array of authorities responsible for supervising, supporting and organizing artisanal mining activity in the sites selected for this study, none were exempt from committing violations in a systematic manner that significantly impacts miners and others. Based on our review of the data, we have classified these groups as: FARDC; other government officials, which includes mining police, national police, SAESSCAM, local officials, and others; traditional authorities; non-state armed groups, which in this research generally references covers M-23, FDLR and a number of Mai-Mai groups; cooperatives; and mine bosses.

These different groups’ actions structure the lives of miners and others through multiple acts that link the provision of a form of order with a generalized sense of disempowerment and uncertainty. In the most severe cases, these actors engage in severe violence and repression, including beatings, torture, and extralegal imprisonment. Even where violence is not used, empowered forces ensure that miners and others experience a generalized sense of impotence, uncertainty and informality. Within this context, threats are common (possibly making

⁵⁷ OH_BR_2013_12_XXDRC1_Eng

violence unnecessary), dangerous conditions are the norm and the theft of wages and minerals is widely experienced alongside refusals to honor employment agreements and pay full wages. Those with authority at multiple levels extract payments in the form of illegal “taxes” and through other systems. And what dominates the industry is a near complete lack of accountability such that the structures of power that define artisanal mining in the region are infused with impunity, mirroring the governance problems of larger DRC.

Interestingly, the group for which we received the greatest number of complaints most overwhelmingly associated with labor and human rights violations in the recorded case studies is mine bosses. This group – comprising either the team leaders who manage a group of around a dozen miners or the tunnel owners – was implicated in 51 percent of the recorded case studies. Many miners described the negative impact that the informality of the industry had on their lives. Miners, porters, crushers, washers and others who provide the key hand labor for the artisanal mining industry consistently described their vulnerability at the hands of mine bosses:

The work we do is not based on a formal agreement.
The mine bosses do not see us as employees, but rather
as someone to help him. They give us a place to work,
but no one is there to protect us.⁵⁸

All of the mining sites under study experienced violations associated with mine bosses. The most frequent violation was wage underpayment, often significant, or non-payment for an extended period of time. This was often linked to the indebtedness of the team boss or pit owner associated with the violation, highlighting the complex web of relationships in artisanal mining whereby mining bosses are pre-financed by ‘negotiants’, or buyers, to conduct pre-production exploration work (such as tunnel construction). The mining bosses must then repay this debt once production begins.

The consequence of this for the miners is that if their team leader or pit owner is under pressure to repay a certain debt, they experience a dramatic reduction in their pay or they go unpaid. This in turn pushed them into further debt as they are unable to repay loans made to them while constructing tunnels, and a downward spiral ensues. Two additional factors explain the prevalence of this phenomenon. Firstly, the miners work outside of formal contractual agreements, according to verbal contracts only. These are more easily broken, becoming a game of one man’s word against another in the occasions the case reaches a hearing with the local or traditional courts.

Secondly and related to this, recourse to justice appears beyond the reach of miners. Not one single case of wage underpayment, wage

⁵⁸ OH_AJ_2013_3_MDRC

non-payment, wage theft or mineral theft experienced by a miner raised in the case studies had been brought to justice. In instances where miners had decided to take the issue to the authorities, the case was always reported as ‘under consideration’, and this often several months after the event had occurred. More usually, in attempting to reclaim payment or stolen minerals, miners were threatened and refused entry into the mines, essentially forcing them to leave the job.

This final violation, where miners attempting to address an injustice are forced out of their job, came up multiple times, and raises another interesting revelation from the case studies: the high level of collusion between different authorities and powers in suppressing and controlling the miners. Often, mining bosses collude with FARDC, mining police, national police or government agencies such as SAESSCAM. In fact, FARDC, mining police and PNC were frequently cited as detaining, threatening and imprisoning miners that mine bosses had reported as troublesome and then extorting fines for their release.

FARDC was associated with 20 percent of recorded case study violations, most frequently illegal taxation or beatings and torture, constituting severe human rights violations. Instances of wage and mineral theft were also reported among FARDC soldiers. One man began mining in 2007 when his parents had no money to pay for his school fees, “My parents are poor. My father had cows and goats, but due to war, he lost everything.” Yet, when he earned money or had minerals, armed groups, including the FARDC, kept stealing what he earned:

In the mining sector, there is always the military. Even if they are not in the mines, they are in the villages or on the roads where they set up roadblocks. There they detain us and rob us.⁵⁹

Other government officials including local, regional and national authorities were associated with 17 percent of case study violations. More than half of these cases involved illegal taxation or wage and mineral theft.

When the authorities come, they take minerals. This is hard for us miners. For example, when the Division Manager or the Administrator of the Territory arrives, all of the materials of the day are taken. The team leader tells us that it is for the authorities. When the Provincial Minister passes by, the team leader may even confiscate the material for the whole week.⁶⁰

⁵⁹ OH_BE_2013_4B_MMDRC

⁶⁰ OH_BE_2013_4_CNDRC

The national police (PNC) were commonly referenced as using their power to repress workers:

We live by the grace of God. The little we earn is for food and soap for washing clothes. We've fallen into debt which we pay off by extracting stones containing cassiterite. I know that there are times where they arrest people because of these debts. Just a month ago, the PNC in Katagota arrested a friend because of money he owed for drinks.⁶¹

And, SAESSCAM and the mining police, agencies created to support or protect the rights of miners and others working in the industry were commonly cited as a repressive and abusive force. As with other empowered groups, they wield their authority largely to extract money from the system:

We have a big problem with the mining authorities and SAESCAM who demand big taxes and illegal payments. The creuseurs in Mukela are not protected. We need someone to advocate for us.⁶²

Many mines in the eastern DRC are controlled, wholly or partially, by traditional authorities. The popular legitimacy of the power of these leaders varies based on location and integration within local society. In some cases, traditional authorities are widely respected and play key roles in managing disputes within communities. In other areas they are viewed with less respect and seen to be largely seeking to maximize personal gain.

So, while some miners benefit from the authority of traditional leaders, they are widely seen to work with other empowered figures at the expense of workers. As a 39-year-old man with seven children who has worked in mining since 2007 explains:

Whenever a labor dispute reviewed by the traditional authorities, they always side with the corrupt mine bosses. This lack of independence makes it impossible to protect our rights when they are violated by the mine owners.⁶³

DRC domestic law requires all artisanal miners to organize into cooperatives designed to protect workers' rights and ensure improved working conditions. At present, cooperatives seem to range widely in

⁶¹ OH_AJ_2013_6_AMDRC

⁶² OH_AJ_2013_3_MDRC

⁶³ OH_HA_2012_11_BSDRC

terms of power and responsibilities. However, to the degree they gain authority as the rules become more standardized across the industry there is significant concern among miners that they will play a role similar to that of other authorities which is to say that they will provide minimal assistance while coming up with ways to take money and minerals from different players within the system, particularly the least empowered.

Those presenting testimonies suggested that the process is likely to operate like other mechanisms, through the cooperation and collusion of multiple authorities. One miner describes how he thinks traditional leaders are likely to co-opt cooperatives created in the mines under their control:

The cooperatives will not succeed here where there are traditional leaders. They will simply put their family members in the cooperative and will influence what they do. And, if you try to prevent this, they will stop you.⁶⁴

Our research also revealed the abuses, excesses and violence of multiple non-state armed groups. These were described as stealing from miners and others at mine sites and along different transit routes, both near mines and some distance from them. The groups commonly threaten miners and occasionally are described as engaging in forced labor, torture and other severe human rights violations.

Other difficulties we have come when the Yakutumba soldiers arrive to collect money or gold from each miner . . . It is common that these gunmen take control of the mining sites and force the people to work on their behalf. When that happens, the mining bosses, the miners and everyone else working in the mines can do nothing.⁶⁵

As described, when non-state armed groups arrive, they commonly take what they want and force workers to labor for them. Still, a number of people suggested that there is likely collusion between these forces and state forces in terms of allowing multiple parties to benefit from mineral extraction and to avoid military engagements.

While this project gathered significant data on the operation of non-state armed groups, the case studies and data collected from the major mine sites studied involves substantially less of these violations than what is commonly documented within the literature. In this sense the study provides some insight into the nature of violations and abuses at mines that are less controlled by these non-state groups.

⁶⁴ OH_AJ_2013_6_AMDRC

⁶⁵ OH_AJ_2013_3_MDRC

It is very important to understand that many of these violations and abuses suffered by miners occurred with distinct authority groups working in tandem, with FARDC and other government officials working together or – more interestingly still – traditional leaders and government officials colluding to violate or repress worker rights. This suggests that, while different authorities have many sources of contestation between each other, they realize that they have a shared interest in which they occasionally need to support each other: the suppression of workers to exact maximum profit from the mines. This also suggests that, rather than being considered as competing power structures, *de facto* and *de jure* legal systems in artisanal mining areas should be viewed as separate entities with considerable areas of overlap on certain issues. It is revealing and of cause for concern that in none of the 133 case studies recorded across several mining sites over an eighteen month period and none of the 51 oral histories were there instances where a violation associated with one group was brought to justice.

And notwithstanding the limited data set, some initial conclusions can be drawn. The mining sites studied appear intricately designed to survey, control, discipline, punish and extort from workers, with the overall objective of maintaining the status-quo and suppressing worker organization and resistance. Consequently, new policies often hit them the hardest. All trading houses interviewed for a recent report (OECD, 2012) admitted that miners themselves are most likely to receive less money for the minerals they extract once traceability schemes are rolled out in the Kivus, as trading houses will have to start paying a fixed amount per ton of minerals to finance the traceability scheme. The impact of the *de facto* embargo following the introduction of Dodd-Frank (Seay, 2012) is perhaps a more well-known and recognized case in point. In summation, if mining interventions in the Kivu provinces do not seriously consider and engage with low- and site-level power structures and dynamics, workers and mining communities seem destined at best to continue on their current trajectory or at worst, to continue suffering the consequences of new policies and initiatives.

c) Safety problems in the mines

Safety in the mines is a serious concern. Yet, safety problems in mines were raised by only 6 percent of the case studies; this is likely due to their near complete ubiquity rather than their apparent absence. From our own observations visiting the profiled mining sites and going into the tunnels, it is clear that working conditions in the mines are fraught with danger. Mining tunnels are often poorly constructed, are prone to complete collapse (particularly during the rainy season), and go far beyond the legal thirty meter depth, as specified by the Mining Code.

We suspect it is precisely because of the universality of poor and dangerous working conditions in the artisanal mining sector that safety

issues were so infrequently raised, as for the miners, working in such conditions is the daily norm. The danger is so widely understood that dangerous and even deadly tunnel collapses and landslides are viewed as something to be expected.

In the case studies, miners described fatalities, such as a situation in Nyabibwe when a pit collapse in July 2013 killed a 26-year-old miner working alone at the time of the collapse who left behind a wife and two children, and who received no compensation following his death.⁶⁶

As one miner explained:

I live with death at my side. If the tunnel collapses on me, I will die or survive with a serious disability.⁶⁷

Miners know that the dangers they face threaten their own lives and the future of their families. This is seen in the matter-of-fact tone of discussions of severe accidents – virtually the only safety issues widely discussed – including those that lead to miners' deaths:

One day, there was big landslide. Many people died in that hole. I myself helped recover ten bodies. I already had debts and I was suffering from malaria.⁶⁸

Since I arrived in Kalimbi, I've seen more than five accidents that have killed miners. Myself, I was saved by my colleagues in an accident that had killed three.⁶⁹

As a miner who has worked in the industry for over two decades and whose eldest son works with him in Nyabibwe, explained:

I know that sometimes there are fatalities here at Kalimbi, as there are everywhere in the mines. With this work, we are exposed to hazards. I've seen people die in the tunnels. Some are buried alive in wells or injured in landslides. When miners die, we bring them home if they are from near here. If they are from far away, we bury them at the site. In these unfortunate situations, we all contribute.⁷⁰

The story illustrates both the widespread acceptance of the severe

⁶⁶ VC_BE_2013_7_KBDRC

⁶⁷ OH_AJ_2013_3_MDRRC

⁶⁸ OH_HA_2012_11_BBDRC2

⁶⁹ OH_BE_2013_4B_MMDRC

⁷⁰ OH_BE_2013_4B_IEDRC

danger of mining coupled with a sense of solidarity among miners that varies widely depending on the team, the site and other issues. Yet, the difficulty of finding family for those killed and the idea they may be buried locally by colleagues, far from their families and villages, is itself a type of suffering.

Yet, miners are also aware of safety differences between one site and another. They commonly describe strategies to minimize risk such as a miner (who had been a soldier from 1996 until he was demobilized in 2005, first with the AFDL and then with multiple other groups), followed two brothers into artisanal mining in Misisi, later changing mines:

I returned to Mukela because in Misisi I saw many people die after being buried in landslides.⁷¹

Alongside landslides and tunnel collapses, many miners complained that they work in mines where tunnels are too deep with very little oxygen circulating.⁷² One miner reported working in mines up to one hundred fifty to two hundred meters deep.⁷³

Inside you come up against water and a lack of oxygen. A machine is needed to circulate oxygen down there, and it often breaks down. Water is also a big problem. There was a mine collapse in October. Two miners were injured, one of whom was a friend of mine. One miner died. The families received no compensation.⁷⁴

The failure to ensure adequate air flow can lead to fatalities, as was the case in March 2013 in Nyabibwe when a machine to help circulate oxygen deep down in the tunnels broke down, leading to the death of a young miner.⁷⁵

If and when miners fall ill or injure themselves as a result of the poor working conditions in the mines, they not only receive no compensation or pay while they are away from work, but they can also be chased off the mine when they try to return. Such was the case for a 27-year-old miner from Lemera, who suffered from a bad back after carrying bags of rock up a steep one hundred and twenty meter hill for a whole day without a break for food or water. Unable to work at full capacity the following week (or afford or access appropriate healthcare),

⁷¹ OH_AJ_2013_3_MDRC

⁷² VC_AR_2013_6_BTDRRC, VC_AR_2013_5_ZNDRRC

⁷³ OH_BR_2013_12_XXDRRC1_Eng

⁷⁴ OH_BR_2013_12_XXDRRC1_Eng

⁷⁵ VC_BE_2013_4_ODRC

the miner was chased off the site by his pit boss, and at the time of the research had been unable to return to work or secure his unpaid salary.⁷⁶

In December 2012, there was a landslide in a cassiterite mine in Lemera in which two miners were killed and one seriously injured. “My two friends were killed, but I was spared this because I wanted to leave the well to fetch cigarettes. But I’m hurt.”⁷⁷ He was saved by other miners who brought him to a hospital, which fortunately relatively close to the mine, unlike in most mining locations where adequate healthcare in such circumstances is inaccessible. He was unsure how to pay for his care and was looking for someone who might assist him and his family, as well as the families of those killed. When project staff looked into this case, they received a complex set of different discussions of who was responsible. Some authorities said that the responsibility lies with the mining boss, but that since they were not legally registered as artisanal miners as required by the mining code, there is little that can be done.

In one of the oral histories, a 36-year-old mother of five children was forced to start working as a porter after her husband was seriously injured:

I work in the mines carrying rocks only because my husband was injured in December 2012 in Mugerero in a landslide that killed two people that were in a tunnel. The mine boss gave us nothing for the care or support of our family, even as my husband is now disabled. Now, I carry sand and stones from the quarry to the river which is about three kilometers. I have to climb hills with a heavy burden of over 20 kilograms. If I were to fall and break my back, that would be the end of my whole family.⁷⁸

The failure of the system to provide any support for the many thousands of injured and ill miners is a major problem with the industry which highlights the extraordinary risk and vulnerability of artisanal miners.

Only a few miners discussed injuries. Largely, this is because injuries in artisanal mining are so common, even when severe, that miners expect these to occur and similarly expect little assistance or support from any authority. Despite provisions in the mining code that require various safety provisions, miners commonly work with limited if any safety equipment. One miner compared his work in the artisanal mines to the industrial mines of Banro:

⁷⁶ VC_AJ_2013_5_KBDRC

⁷⁷ OH_HA_2012_11_KCDRC

⁷⁸ OH_AJ_2013_8_NJDRC

What makes me sad are the conditions in which we work here. We have no adequate or appropriate clothing to enter the tunnels. We see others at places like Banro wearing helmets, masks, and overalls. They earn a good salary while we work like animals without any protection.⁷⁹

Where injuries are described by miners they tend to be severe, both physically and psychologically. For example, one female miner described having a miscarriage while working:

They put the cassiterite load in my bag and told me I could carry it on my back because it was 25 kilograms.

After a few steps, my friends came running and told me there was blood running down my legs.

I had started to feel pain and had to stop to see.

Some people had come to help me and they weighed the package, which, contrary to what they had told me, weighed 70 kilograms.

Nobody cared for me.

The owner of those minerals didn't pay me anything because I hadn't yet washed the ore.

I sold my clothes to get treatment.

After recovering, I went back in the mines.

There was nothing else I could do.⁸⁰

While the story alone does not provide proof that it was artisanal mining or the overweight bag of cassiterite that led to the miscarriage, the story reveals the danger of the work as well as the desperation and profound need that drives Congolese to work in artisanal mining.

Poor hygiene in the mines leading to illness and disease is another frequent complaint. Miners commonly fall ill and have limited access to health care and no means of offsetting lost wages when they are injured or sick. In fact, many mine bosses punish them for an absence from work, including refusing to allow them to come back,

⁷⁹ OH_AJ_2013_6_AMDRC

⁸⁰ OH_HA_2012_11_MFDRC2

regardless of the reason. Even basic facilities, like toilets, are absent in the mines which creates many health hazards, especially in the larger mines.⁸¹ In addition, gold mining involves the use of toxic chemicals and miners and washers commonly report falling severely ill (being “poisoned”) and finding themselves with no safety net and no assistance:

We were cleaning the rocks to get out the gold. We often got sick but we had no way to get help. In Shabunda I dug for gold for three months. But, I was poisoned. So, I decided to go Nzibira.⁸²

What is interesting about the danger of artisanal mining is that it is so common as to be understood as expected, with miners doing what they can to minimize risks, while well aware of their vulnerability. While much of the international attention paid to artisanal mining focuses on severe human rights violations largely committed by the FARDC and various non-state armed groups, the daily risks of miners are enormously serious.

d) Threats and acts of violence

Threats, often backed up by various types of violence, made by virtually every empowered actor against miners and others, are ubiquitous in the artisanal mining industry. A significant number of the case studies, 16 percent, involve instances of miners or other workers being threatened or victims of violence on the job.

A typical case is that of four miners in Katagota who tried to claim their unpaid salary from their boss. As a result, they lost their jobs and continue to be threatened by their former boss with arrest should they ever try to return.⁸³ Similarly, a 33-year-old miner from Lemera worked for two months without being paid, producing cassiterite for his boss on a daily basis. When he tried to claim a salary for his work, he was chased off the mining site and was never paid.⁸⁴

In general, miners and others understand their lives to be uncertain and are accustomed to great vulnerability. In fact, they know that there is essentially no one to turn to when they are mistreated and those with power will begin with threats and often act with violence. Mining bosses and others change the terms of agreements and threaten and punish miners as they see fit:

⁸¹ VC_AR_2013_6_TMMDRC

⁸² OH_HA_2012_11_BBDRC2

⁸³ VC_AJ_2013_8_NSDRC, VC_AJ_2013_8_ALDRC, VC_AJ_2013_8_BSDRC, and VC_AJ_2013_8_KDRC

⁸⁴ VC_AJ_2012_4_MMDRC

Once, I suffered from an illness and missed a week's work. The mine boss told the team that I should not receive any part of the minerals I had worked on before I fell sick. What could I do? The mine boss is untouchable. If you dare cross him, he either throws you out of the mine or has you beaten. There is nothing you can do legally.⁸⁵

Artisanal mines are often so poorly controlled by a singular authority that multiple players threaten workers and others and use violence to achieve their ends. These include criminal elements at every level, from small-scale thieves to well-organized groups. This forces miners and others to be constantly vigilant and to spend considerable effort, individually and in groups, to seek ways to protect themselves and their things:

There are a lot of threats and violence in the mines. Whoever's the strongest intimidates the others.

There are gangsters, pickpockets, who steal your things in the mines.

It's like being at the market. There are porters who are supposed to help you get your minerals from inside the tunnels to the outside, but sometimes they steal your work.⁸⁶

Threats of acts of violence are particularly likely when miners seek to make claims for compensation or to challenge the actions of mine bosses and other empowered actors. For example, one 33-year-old miner working in Lemera sought to gain compensation for his cousin's family after he was killed in a landslide in a cassiterite mine. He met with all of the area authorities, including the traditional leaders:

I spoke with everyone I could to help our family protect our rights . . . I was formally notified by the mine supervisor, that if I dared return to the mine site I would be severely beaten and then sent to prison.⁸⁷

Many threats and related violence are associated with the structure of the artisanal mining economy, in which miners commonly fall into debt as they seek to discover adequate minerals to earn a living. Mine bosses often work with state authorities to threaten, imprison,

⁸⁵ OH_AJ_2013_4_BJDRC

⁸⁶ OH_BR_2013_12_XXDRC1_Eng

⁸⁷ OH_AJ_2013_2_MADRC

beat and even torture miners when they fall behind on their debts or seek to avoid paying them:

It is difficult to tell you how I manage my money. I earn next to nothing after I pay off my debts. I can't avoid my creditors who often threaten to take me to the PNC and then to jail. So, other than the mine boss himself, there are very few working in the mines that save anything.⁸⁸

Instances of underpayment are also common. A 42-year-old miner from Lemera was told he would be paid 12,000 FC for transporting three 25 kilogram bags of rocks over long distances, but received only 4,000 francs. When the miner tried to claim full payment for the work, he was threatened by his boss and the police.⁸⁹ In one instance, a miner trying to claim compensation for the death of his uncle in a pit collapse in December 2011 was threatened and forced out of the mine by the local *mwami*, or traditional leader.⁹⁰

Sometimes threats or violence are accompanied by mineral theft, as in the case of two women in Nyabibwe, aged 29 and 34. Having bought cassiterite from the mining site, the women were attacked by mining security, had their minerals taken off them, and were ridiculed and humiliated before being forcefully evicted from the mining site.⁹¹ There is no law forbidding the participation of women in mineral trade, yet the apparent lack of law enforcement in the area allows such instances to occur with impunity.

Overall, miners and others working in the artisanal mining industry work in conditions of constant threats and violence or at the very least the knowledge that such threats and violence are likely if they are to complain to authorities or seek to defend their rights and/or claims of mistreatment. The regularity of these threats and the significant disempowerment of miners make violence generally unnecessary to ensure compliance with authorities' demands. This situation defines the daily lived experience of those laboring in the industry.

e) Wage theft and mineral theft

Wage or mineral theft was an extremely common finding, being reported by 35 percent of the case studies. This is an interesting finding, as while much work has reported the extent to which the artisanal mining sector in the eastern DRC adheres to its own norms and order

⁸⁸ OH_AJ_2013_4_BJDRC

⁸⁹ VC_AJ_2013_6_LMDRC

⁹⁰ VC_AJ_2013_1_MADRC

⁹¹ VC_BE_2012_7_XXDRC1 & VC_BE_2012_7_XXDRC2

(Geenen, 2011), remuneration for mine workers appears arbitrary and unstructured. While they are often indebted to a buyer or a boss who has pre-financed pit construction and provides them with materials and daily rations, they work outside of formal contracts or salary agreements. From the information gathered by the case studies, this appears to leave them vulnerable to non-payment, severe underpayment, and theft.

Stories of working for extended periods of time without payment were found across all the mining sites studied. In Lemera, a 26-year-old miner worked for six months without payment.⁹² In Katagota, a 61-year-old man worked for several months as a mine security guard without payment.⁹³ In Mukela a 52-year-old miner worked for two months with no pay, and so eventually left the job.⁹⁴ Instances of severe underpayment are equally prevalent among the case studies, such as a miner who produced nine bags of cassiterite (approximately 270 kilograms) over a three-month period, for which he received just two kilograms worth, or 8,000 Congolese francs, or \$9.⁹⁵

While mining bosses are responsible for the numerous cases of non-payment or severe underpayment, it is state and non-state armed groups – as well as, on occasion, government officials and miners themselves – who appear to be responsible for the large majority of mineral theft cases. For example, two young miners, aged 18 and 22, had their minerals stolen in Kagonbe, North-Kivu by the non-state armed group Nyatura, in collusion with the mining police.⁹⁶ Similarly, yet seemingly more violent, a 34-year-old miner in Mukungwe was stopped on his way home by mine bosses and FARDC soldiers. He was searched and then beaten and tortured until he revealed the 23 grams of gold he was hiding in his belt. They took nine grams off him, and left him with fourteen. A 17-year-old miner working in Kagonbe reported having his minerals frequently stolen from him by the Mining Police and armed groups.⁹⁷ Instances of miners stealing from other miners are less prevalent than the cases cited above, but do exist. For example, a 40-year-old miner from Katagota had one day's worth of minerals stolen from him by a colleague.⁹⁸

On one occasion, a mining boss from Nzibira found himself victim of significant mineral theft, as well as a severe human rights violation.⁹⁹ He had just finished constructing a new tunnel, and was just about to start production. A neighboring mining boss, whose own

⁹² VC_AJ_2013_8_MJDRC

⁹³ VC_AJ_2013_7_MCDRC

⁹⁴ VC_AJ_2013_5_LCDRC

⁹⁵ VC_AJ_2013_2_MEDRC

⁹⁶ VC_AR_2013_7_NMDRC and VC_AR_2013_7_NSDRC

⁹⁷ VC_AR_2013_7_MNDRC

⁹⁸ VC_AJ_2013_1_MMDRC

⁹⁹ VC_BE_2012_7B_XXDRC2

tunnel was flooded and who had an outstanding debt of \$250 in urgent need of payment, colluded with FARDC to have him arbitrarily arrested and imprisoned for a period of four days. During this period, the neighboring mining boss and his team worked in the imprisoned man's tunnel to extract his cassiterite. When the man was eventually released, he received no compensation or payment for the minerals stolen from his tunnel.

Non-state armed groups commonly steal money, property and minerals from miners and others:

In the forest at a place called "black", the FDLR stole everything from us. They shot in the air to intimidate us. We were forced to return to Bukavu empty handed.¹⁰⁰

They do this systematically at multiple locations, from the many roadblocks operated throughout the region to mine sites to paths from mines to washing areas and others areas of transport:

One day when we left the mine, we were ambushed by the FDLR. There were eight of them and they were well armed.

They said, "Hands up!"

There were three of us. We stopped and had to put everything down. I had 15 kilograms and the others had 17 kilograms and 10 kilograms.

The armed men took it all. And one of them said, "You can go."

So, we left.

Another one said, "No."

We came back and they started to search us.

They were very pleased to find a mobile phone and FC 20,500.

I had no money and FDLR beat me.¹⁰¹

Money and minerals are also stolen from workers by the refusal to pay, significantly reduced payments and systems to undercount and

¹⁰⁰ OH_HA_2012_11_SSDRC

¹⁰¹ OH_HA_2012_11_MIDRC

under-weigh actual production. For example, a 40-year-old mother of five has spent the past four years working as a *twangense* (one who pounds stones to separate the rock from the minerals) and as a porter. Her husband farms, but the income is both minimal and seasonal, “we have to wait a whole year to sell the harvest.”¹⁰² She is commonly cheated out of her wages by being paid less than what was promised or being forced to carry more weight than she is paid for:

Sometimes I work hard and they don’t pay me . . . There are times where the managers make me carry a heavy burden of stones. Then, instead of paying me the FC 2000 we agreed upon, I get 500 FC. And if I complain, I might not have a job.¹⁰³

Another porter with seven children who were once all in school describes the financial difficulties of work in the mining industry, “Today only four study because life has become difficult and I have no money to pay school fees for all seven.”¹⁰⁴ He describes the systematic nature of wage theft by agreeing on a price and then forcing workers to wait for payment and then falsely weighing the bags, leaving workers with less than they were supposed to be paid:

They pay us 2500 FC to carry a 50 kg bag of cassiterite. I can carry two 50 kg package per day and thus earned FC 5000. They pay us as soon as we deliver the bag to the owner, but sometimes we have to wait two days while they are negotiating the payment. The bags are supposed to weigh no more than 50 kg for men and 25 kg for women. The scales they use are not correct. Traders and miners often cheat us about the weight. They give us 75 kg and say it is 50 kg. So, we are exhausted. Sometimes we fall and get hurt because of the weight. But, we cannot refuse to carry the bags, even if they weigh more than 50 kg because we need the jobs. We are afraid to challenge them because they can take the bag and give it to another porter.¹⁰⁵

Yet, within the mining industry there are moments of kindness and generosity. In a way, these are significant because of the enormous gratitude of miners and others when they are treated well, allowed to earn what was promised or to keep some more of the minerals extracted.

¹⁰² OH_AJ_2013_2_ESDRC

¹⁰³ Ibid.

¹⁰⁴ OH_HA_2012_11_RBDRC

¹⁰⁵ Ibid.

One young miner describes how he ended up washing cassiterite and a day when he was allowed to earn a bit more when a tunnel owner allowed him to keep more of his share:

My whole life is full of suffering. I'm fatherless and motherless since Kabila's war in 1996. My father was a soldier and he died at the airport when the AFDL took Bukavu . . . After the sixth grade, I was unable to continue my studies because secondary school is so expensive. With all my friends, I went to dig in Walungu and Walikale . . . I started cleaning cassiterite. Their owners paid me 8,000 FC, but just a meal cost FC 4000. I started to fall into debt and soon I was 48000 FC in debt. I started to work hard to pay the debt and started digging after paying \$10 to the crew boss and \$15 to the owner of the mine. The first day I dug 8 kg of cassiterite. I gave 2 kg to the team leader, but the owner of the tunnel had mercy on me because I was exhausted and had almost nothing. He let me keep the rest and so I sold the remaining 6 kg.¹⁰⁶

f) Child labor

Nearly a quarter of the case studies, 23 percent, reference child labor as defined by Congolese and international law. However, it is worth observing that of these thirty cases, 60 percent involved children over the age of sixteen and none of the cases referenced children younger than fourteen. This does not mean that younger children are not working in the mine sites, but rather that those interviewed did not focus on this issue. To a large degree, many of those who spoke with the research team did not express criticisms of teenage workers laboring in the industry. In general, 16 and 17 year olds in the eastern DRC are not viewed as children and younger children either crush rocks or engage in washing, work commonly done by women and viewed by many as far less dangerous.

In a socio-economic context of widespread poverty and low secondary school enrollment and a cultural environment in which adulthood begins in early adolescence, it is questionable how to best respond to this phenomenon from the Congolese perspective. It is not that child labor is not a legal violation, but rather that how it is viewed by the community is central to creating a useful response.

The case studies revealed the importance of children's labor in providing for their families basic needs. The children very often came from families living in extreme poverty where they were either the eldest household member or had sick or infirm parents or grandparents. For

¹⁰⁶ OH_HA_2012_11_BBDRC1

example, three boys aged fourteen to seventeen in Bulau, North-Kivu reported that they were working in the mines and specified that they were there “of their own free-will” to provide for their family.¹⁰⁷ Of course, the extent to which free-will can operate in such a context of widespread poverty and few viable livelihood opportunities must be questioned. Nevertheless, it is noteworthy that among the thirty child labor cases reported only one was a confirmed case of forced labor in which a fourteen year-old boy in Lemera was forced by a woman to break rock without being compensated.¹⁰⁸

One miner describes how his younger brother, a child, chose to join him working in the mines and why he finds it difficult to counsel him to stop this work:

I know that the NGOs told people to remove children from the armed forces, but they are still there. A lot of kids are back out in the bush because they say that they were lied to, that they received nothing of what was promised by the NGOs. My little brother could not pay his school fees. So, I sold my radio to help cover these costs. But, now I have asked him to come and work to provide for his school supplies for next year. They say that children should not work in the mines. But, it is difficult for me to tell my little brother not to visit the mine site since he must work. And, it is useless if people from the NGOs try to make us stop.¹⁰⁹

An oral history with the vice-president of a mining cooperative in Nyabibwe raises the complexity of the issue, by pointing out the consequences of banning children from mines:

We’ve observed that now there’s a problem with street children who can no longer work in the mines but they have nothing else to do so they live in the street...We need some social support programs to help them, because they no longer have any other work.¹¹⁰

This being said, the study did find multiple cases of fourteen and fifteen years old doing dangerous work in the mines, thereby confirming the widespread existence of child labor as reported widely elsewhere. We suspect that had more research been carried out in mining sites in North Kivu and in sites more isolated than those

¹⁰⁷ VC_AR_2013_5_SNDRC, VC_AR_2013_5_MNDRC, and VC_AR_2013_5_KKDRC

¹⁰⁸ VC_AJ_2012_3_BSDRC

¹⁰⁹ OH_AJ_2013_6_AMDRC

¹¹⁰ OH_BR_2013_12_XXDRC3_Eng

selected for this study, the recorded prevalence of child labor would likely have been even higher.

Alongside the issue of children working are significant discrepancies in wages and working conditions for child laborers. For example, wage differentiation between children and adults was specifically raised in five reported cases of child labor in Katagota involving children aged 14 to 17.¹¹¹ The children reported being paid 3,000 Congolese francs (a little over three dollars) to crush 20 kilograms of stone, whereas the adults are paid 7,000 Congolese francs for the same work.

g) Illegal taxation and extortion

There is substantial illegal taxation and extortion within the artisanal mining industry. However, it is not always easy to distinguish one form of extracting payment from another in terms of how it should be described. That is, from the perspective of miners, illegal taxes and extortion is the norm not the exception. It is so widely practiced and so profoundly integrated into the entire system that it hardly appears as a formal complaint in the case studies.

At times, these payments are presented as a tax or “ration”, especially when collected by the FARDC.

The military came to us four times a week for payment. Each time, I got to keep about half of the material I mined. We always had to pay the mine bosses and the military. Still, after seven months, I made \$250. I decided to return to Bukavu.¹¹²

The soldiers would come to receive payments two times a week. You had to pay them or they would put you in jail.¹¹³

At times an agreed upon payment to the mine boss is exacerbated by an illegal tax from the FARDC, PNC, mine police or others. In this case, a miner who had previously had bad luck finally found some cassiterite and ended up with only a fifth of what he extracted:

At the tunnel exit, the team chief was waiting. When I presented the 10 kg, he took 6 kg and left me with 4 kg.

¹¹¹ VC_AJ_2013_6_MPDRC, VC_AJ_2013_6_PADRC, VC_AJ_2013_6_FBDRC, VC_AJ_2013_6_SSDRC, and VC_AJ_2013_6_ZPDRC

¹¹² OH_HA_2012_11_SSDRC

¹¹³ OH_HA_2012_11_BBDRC1

A few meters from there, I met soldiers who threatened me and force me to give them 2 kg. So, that left me with 2 kg of cassiterite.¹¹⁴

A notable case was of five porters, aged between 32 and 55, in Nyange.¹¹⁵ These men carry heavy sacks of rock from the mine to the town for nine hours each day. In return, they receive a payment of 2,000 Congolese francs, or a little over two dollars. However, each of the five men reported that at various points FARDC, non-state armed groups and the mining police all set up their own roadblocks and extracted illegal taxes from the little money that they make.

In addition, arbitrary arrest and threatened arbitrary arrest are associated with extortion. For example, in one case, a 28 year-old man in Nyabibwe was arbitrarily arrested by the PNC, had his goods stolen, and was then imprisoned for two days. To secure his release, he was forced to pay the significant sum of 74,000 Congolese francs, or \$82.¹¹⁶ In another case, a miner from Nzibira was threatened with arrest by FARDC soldiers and the Mining Police, and was forced to pay \$100 to avoid imprisonment. These amounts are very significant for artisanal miners. It is likely that the amounts of illegal taxes and extortion (it is often difficult to distinguish between the two, especially given the ever-present use and/or threat of violence by authorities) vary widely by site, particular authority, individual case and other factors. While this situation merits further study, it highlights the overall determination by this research project that the particular practices within the artisanal mining industry vary by site are commonly flexible and constantly shifting.

An example of what happens when a miner refuses the tradition of working for FARDC – known as *salongo* – was raised by the case of 31-year-old miner from Nzibira.¹¹⁷ Each day, the miners at Nzibira are expected to pay a daily ‘ration’ of their work to the military. Refusing to pay his ration, the miner was banned from entering the mine until he agreed to work for one whole week on behalf of the military. Believing the Commander to be in Bukavu on his weekly security meeting, the miner went into the mine nonetheless. He was however spotted by the Commander who had stayed in Nzibira, was arrested, thrown in prison, and severely beaten.

One final example of a 29-year-old woman who washes minerals in Nzibira highlights the discriminatory gender dynamics that

¹¹⁴ OH_HA_2012_11_SSDRC

¹¹⁵ VC_AR_2013_2_NBDRC, VC_AR_2013_2_RKDRC,
VC_AR_2013_2_BBDRC, VC_AR_2013_2_NKDRC, and
VC_AR_2013_2_MDDRC

¹¹⁶ VC_BE_2013_4_BJDRC

¹¹⁷ VC_BE_2012_7B_MKDRC

occur at mining sites.¹¹⁸ To access and wash abandoned rock around the mines to look for and sell any leftover cassiterite, this woman was told by the pit boss that she would have to sleep with him. When she started working, the pit boss then imposed a tax on the small quantities of cassiterite that she managed to find. The woman reported that the local authorities also impose a special tax on all women working in the mining site, simply because they are women. Women who refuse to pay this tax are summoned in front of the traditional authorities and sometimes even the military.

h) Severe human rights violations

This study reveals the systematic nature of underpayment, non-payment, cheating, excessive taxes, threats and the constant abuse of the powerless by the powerful (relatively speaking). Yet, the case studies and oral histories also documented multiple severe human rights violations. Approximately 13 percent of case studies reference severe human rights violations, underlining the volatile and dangerous climate in which miners work. Many of these cases involved miners being illegally imprisoned and/or severely beaten, predominantly by FARDC soldiers.

Beatings, sometime quite severe, appear commonplace. For example, a fifty-year-old miner who was beaten by FARDC soldiers for refusing to help construct a road block.¹¹⁹ And, in another case, a thirty-year-old miner who was severely beaten for not paying his military 'rations'.¹²⁰ However, because of this, physical abuse is often not practiced by empowered forces that can commonly achieve their ends because of the widespread understanding of the possibility or even likelihood that a threat of violence will be followed by actual violence.

One 26-year-old miner from Mukungwe was imprisoned and tortured by FARDC after his mining boss reported him for being suspected of working for Banro.¹²¹ Another slightly more complex example involved a level of collusion between two miners and some FARDC soldiers in Nyabibwe to illegally mine a closed pit one night.¹²² When morning came, the miners stayed back in the tunnel, hoping that the soldiers would get bored and go away, leaving them to keep the cassiterite to themselves. However, the soldiers simply became impatient and gathered grass and wood to fill the tunnel entrance, and then set the entrance on fire. Rather than suffocate from the fumes, the miners came out of the tunnel. One of them escaped, while the other

¹¹⁸ VC_BE_2012_7B_XXDRC1

¹¹⁹ VC_BE_2013_4_MADRC

¹²⁰ VC_BE_2013_3_XXDRC2

¹²¹ VC_BE_2013_3_XXDRC1

¹²² VC_BE_2013_7_BDDRC & VC_BE_2013_7_MDRC

was thrown in jail for five days and made to pay a \$45 fine for his release.

Non-state armed groups were also described as brutal and cruel in their actions. Not only did they steal from miners, but they beat them, tortured them and even killed them:

And, I can't count the number of times I fell into the hands of the FDLR. My whole body is covered in scars because of how they beat me nearly to death and robbed me of all my possessions.

One day my friends fell into their trap and were severely tortured. To break them, they put a can in the fire and used it to burn their bodies. They made them give them all the money they had.¹²³

These experiences were not dominant in the mine sites studied, but they are clearly a core element of artisanal mining in the region and it is these abuses and efforts to end them that have been the focus of the many efforts to end the trade in conflict minerals in the DRC.

Despite the seriousness and systematic nature of human rights violations in the artisanal mining industry in the region, the research did not reveal that miners live in conditions of unremitting suffering. For example, while some international NGOs have documented mines with over 90 percent rates of slavery, this is quite different from what our work revealed.¹²⁴ In fact, this project found forced labor to be common, yet structured in a manner that allowed miners to continue to remain in the industry. That is, like illegal taxation, extortion and beatings, the use of forced labor was largely temporary such that it extracted value from miners and others while allowing them to continue to earn enough to remain at the mines.

The study found forced labor of various types to be common, yet generally limited to a set number of days. Often, it was used as a proxy for illegal taxes or as a mode of punishment:

Very often, mining is impacted by the military. If a miner has not paid the famous "ration", the military will come and beat him and steal everything he owns. And

¹²³ OH_HA_2012_11_LLDRC

¹²⁴ Free the Slaves, an international research and advocacy group conducted a field project in three mine sites where they found that 866 individuals out of 931 interviewed by researchers "were confirmed to be in various forms of slavery in three mining communities." (FTS 2013) To the degree that the research reveals a useful representative sample of these communities, the work suggests that over 9 out of every 10 miners is enslaved.

there are arbitrary arrests. Once arrested, the military or the police force us to work for one or two days for them.¹²⁵

Nevertheless, we also found cases in which forced labor lasted for longer periods of time and was associated with extended periods of violation as this miner describes:

We were forced to give the soldiers contributions of \$1.50 per week. If you refused, they would throw you in jail. To get out of prison, the soldiers made you sign a contract where you agree to work for them for two months and give them everything. I fell into their trap twice and I worked for them as a forced laborer.¹²⁶

Yet, this case is interesting in that these extended periods of forced labor are referenced as a “trap” whose repressive quality is the exception rather than the rule in the life of this miner.

In fact, one of the characteristic elements of the artisanal mining that we documented in the six sites studied was the idea of miners’ freedom of movement. We found that miners were able to move easily from one place to another and that they commonly left one mining site for another, often with the idea (sometimes true) that they would find better luck elsewhere:

A miner is like a free woman. When he thinks something’s not going well, he goes somewhere else. When you have a ‘digger’s card’ you’re authorized to dig, you can go and dig anywhere in the country. You can go to Shabunda, you show your card, and they let you do your work.¹²⁷

This experience probably ranges widely depending on the location studied and is less likely to be true in sites that are directly controlled by armed groups. Nevertheless, one of the main conclusions of our research is that by listening to miners and others one understands them as disempowered low wage laborers working within a complexly informal system that offers the possibility of improved earnings within a context of uncertainty and danger. In this sense, there is a broad commonality of experience as regards safety violations, wage theft, mineral theft, illegal taxes, extortion and threats, yet wide variety of experience among miners in terms of forced labor and especially severe human rights violations, such as torture, rape and killing. This

¹²⁵ OH_BE_2013_3B_ECDRC

¹²⁶ OH_HA_2012_11_LLDRC

¹²⁷ OH_BR_2013_12_XXDRC1_Eng

distinction helps explain how artisanal mining operates as an industry and has broad implications for seeking to reform practices and develop more protective mechanisms for improving the mining conditions and respect for miners' rights.

i) Other issues

The project identified a range of other issues of relevance to understanding the lived experience of miners, porters, washers and others.

There is widespread mistreatment of women in the artisanal mining industry. Often women are pressured to have sex with mine bosses and other authorities. While it is difficult to determine the severity of the coercion, the pressures are constant and, at times, clearly intense.

One 26-year-old woman living in Nzibira described how she was attracted to the mines, "My family was very poor . . . As a teenager, I wanted to be like my friends but it was impossible because of our situation."¹²⁸ She described how terribly she felt when she was a teenager and couldn't buy clothes or cosmetics like her friends, "I was miserable and my friends started to make fun of me."¹²⁹ With no resources, connections or profession, she couldn't get a decent job, "I saw other girls working in the mines and they had a little money to solve their problems."¹³⁰

So, she went to the mines and worked carrying bags of cassiterite and washing them to separate the minerals from the rock. Yet, in the mines she found significant sexual violence and pressure:

The men here look at all the women in the mines as objects of pleasure. Several mine bosses, and even miners, wanted me to be "their woman", their sex partner, in exchange for giving me minerals to carry and wash . . . I was afraid of being raped. In this work, everything happens and the men –diggers, mine bosses, soldiers – violate women without any consequences. Several of my friends were already victims.¹³¹

Because of these dangers, she left the mines, "I decided to leave this job forever."¹³²

Female workers' status as women presents a key vulnerability that is exploited by those in power. They face special dangers and risks

¹²⁸ OH_HA_2012_11_MFDRC1

¹²⁹ Ibid.

¹³⁰ Ibid.

¹³¹ Ibid.

¹³² Ibid.

and, given the absence of recourse to justice in the mines, where abuses occur, there are limited formal means of filing complaints and, by all accounts, complete impunity.

Alongside these abuses, there are also other types of discrimination against women, including ideas that are rooted in key beliefs about gender differences. For example, there are widely held beliefs that if women enter the mines, especially tunnels, they will impact the success of mining operations. Women do not have permission to enter the mine because they say that if they did, the mine would become barren.”¹³³ A number of people mentioned this issue, which suggests that cultural concepts of gender impact many aspects of the artisanal mining industry.

The conditions of the mines make a decent livelihood difficult, not only in terms of wages, but also because the environment is dangerous and uncertain. For example, when miners earn money they have great difficulty saving it safely or transmitting money safely to their families. One miner who now has seven children left school and started looking for work. He worked in a tea plantation and then a cinchona farm and then as a tailor. “I found that none of these jobs were profitable, so I started working in the mines.”¹³⁴ While he found that he earned better wages, he faced constant violence and the difficulty of protecting the wages he earned:

In Nzibira, there is no way to save money. There is no bank or cooperative. When I sell minerals, I keep my money on me or buy something. But I am always afraid because there is no security. The FARDC fight with the Raia Mutomboki. When this happens, all work stops and we hide in the bush until the fighting ends. And, everything you may have bought, like goats, will be stolen.¹³⁵

Another miner echoes this problem:

We don’t save money because here there are no banks.

We all want to save money, but we can’t do this. Yet, one can take out a cooperative savings and credit in Nzibira and we can become members. Oh yes.

The money we earn, we spend the same day.

¹³³ OH_HA_2012_11_MFDRC2

¹³⁴ OH_BE_2013_5_MMDRC

¹³⁵ Ibid.

We do this because we're afraid that someone will rob us or steal the money. Before, it was calm. It was peaceful. Everyone kept his money in his pocket without fear that anyone would steal or rob.

If one is trying to get money for savings in Bukavu, others are plotting against you. Miners, bandits or soldiers come to rob you. It's easy to move gold to Bukavu, but cassiterite is very difficult, because it weighs too much.¹³⁶

In general, there is a pressing need for miners to gain access to safe mechanisms to save money that they earn and/or to transmit these earnings to family members living away from the mine sites. By being forced to keep whatever they save as cash within the dangerous environment of mining sites, they are often targeted by criminals. This makes saving money difficult and encourages miners to spend what they earn in the bars, restaurants and brothels that surround mining sites. This is interesting, as it goes against many research findings that criticize miners for their profligacy with what they earn. In fact, the research conducted here suggests that miners would prefer to save money and send remittances back to family then waste it on site, if they had the possibility to do so.

While the predatory nature of those in the mining communities has been reported in many reports, it is also important to recognize that there are few diversions in and around the mines, so it is not difficult to understand why miners spend their money at bars and on other entertainment:

In our mine site, we always work as a team. This helps a lot, especially if there is a good production. After we divide up what we find, we can make \$70 each for the week. However, we have no way to save our money. So, I want to bring my family something. But, also I want to relax here with my friends. In Mukela, beer costs from 1,500 Fc to 2,300 Fc. And, I need at least five bottles.¹³⁷

One interesting finding from our research is the number of miners in their 40s, 50s and even 60s. Given the difficult nature of the labor, it is likely that this group is more prone to injuries and may also face multiple additional risks. That said, these miners did not complain about special risks posed by their age. This is likely related to the fact that people in the region expect to continue to engage in difficult physical labor as long as they are able. Alongside a focus on children in

¹³⁶ OH_BE_2013_3_EBDR

¹³⁷ OH_AJ_2013_3_MDRC

the mines, there may also be a protective benefit to consider the special needs of older miners.

Along these lines it is interesting how many miners were interested in learning more about their rights:

Although I married my wife by working in the mines, I have to admit that there are many problems and excesses in mining. One problem is that we don't know the law. Miners need awareness and training about human rights and mining laws.¹³⁸

One key issue here is to develop mechanisms to protect the legal rights of miners and others and to create systems that encourage fair earning and the ability to save money and provide for their families. However, also important are efforts to enable the dignity of miners within an industry that is, by its nature, difficult and stressful.

¹³⁸ OH_BE_2013_3B_ECDRC

6. RECOMMENDATIONS

Artisanal mining in the eastern DRC is widely understood to be both a complex and problematic sector and a core element of the region's seemingly intractable problems. However, unlike many situations around the world where economic production is bound to significant social and political problems, artisanal mining in the country has been the subject of considerable and often impressive research as well as multiple domestic and international policy activities.

As regards research, reports and studies, artisanal mining in the region has been reviewed extensively by domestic NGOs, international NGOs, inter-governmental agencies, foreign governments and various the United Nations' bodies. This study references some, but by no means all, of this significant literature. The substantial body of research on mining provides considerable detail on human rights and labor rights violations in and around the mines. It also reviews the complex and intricate links between artisanal mining and the ongoing conflict, often showing how multiple armed groups benefit economically and, by extension, politically from their control of mines and mineral transport, sale and smuggling. In addition, as discussed in section three above, the DRC government, various foreign governments (such as the U.S., European Union states and OECD states) as well as the U.N. and regional organizations (such as ICGLR) have developed various policies to address the issue of conflict minerals and other key problems within the country's artisanal mining industry. Some of these policies have been implemented and others are in their early stages.

Overall, what is clear is that many domestic and international actors have taken an interest in artisanal mining in the DRC, especially in the eastern region of the country. With this in mind, any effort to propose recommendations and/or policy approaches require an acknowledgment of what has already been proposed (even with the understanding that a full review of past recommendations is not possible here). The energy and resources devoted to policy responses to artisanal mining issues is so significant that it is important to temper any new suggestions with the understanding that many experts have already been deeply engaged with the issue. This highlights the complexity of the challenge and situates this report within a large body of important prior work.

With this in mind, this study does not pretend to provide a new vision of the artisanal mining industry of the eastern DRC. Rather, its contributions are meant to be complementary to multiple past, current and future research and policy initiatives and, as such, are presented divided between four types of recommendations: approaches to policy making, these are general suggestions for how to frame policy discussions; research and policy analysis, including specific calls for new initiatives that build on existing work; direct assistance to miners and others working in the industry, suggesting a number of miners' specific

needs; and, governance and regulation of artisanal mining, outlining possible responses the pressing issue of the legal management of the industry.

a. Approaches to policy making

Engage and address the actual political economy of artisanal mining – This study's focus on oral histories and case studies highlights the importance of recognizing that artisanal mining in the eastern DRC operates within a complex political economy that involves multiple state and non-state actors. That is, for all its well-documented dysfunction and illegality, artisanal mining is a large industry that manages to extract, process, and export millions of dollars in core minerals. And, within this system there are core players – mine bosses, crew bosses, traders, traditional leaders, non-state armed groups, state security forces and others – each of whom benefit in different ways from the industry as it currently operates. For this reason, any artisanal mining policy or initiative that does not duly consider the localized space of the Congolese political economy¹³⁹ is likely to fall short of its desired outcome or, worse still, further entrench the power and control of groups it was looking to weaken at the expense of those it was hoping to empower. For example, the recent top-down mandate of establishing mining cooperatives to support and protect all artisanal miners appears in many cases to have had the reverse effect, strengthening traditional chiefs and local businessmen while exerting another layer of control, harassment and even extortion over workers. Often, a focus on the industry's systematic problems and its reliance on institutionalized human rights violations encourages a perspective that fails to engage the multiple motivations, incentives and benefits that enable artisanal mining to function. Appropriate and realistic policy making, then, should integrate a careful, context-sensitive review of the actual political economy of artisanal mining and develop policies that play off of existing actors' incentives. While this careful process of balancing

¹³⁹ According to Schatzberg, M. (2012), 'The Structural Roots of the DRC's Current Disasters: Deep Dilemmas', *African Studies Review* 55 (1), pp. 117-121, this space is characterized by three structural challenges: protracted political struggle (often armed); internal and external predation of resources, including a predatory state; and a cultural tendency to hang on to whatever parcel of power one may be lucky enough to have, and exploit it for all it is worth, as reflected by the Congolese political axiom "le pouvoir se mange entier" (power is eaten whole).

worker protections and existing power structures will not be easy, it is necessary for developing effective policies.

Recognize the diversity within different mines and regions –

While the overall artisanal mining industry is characterized by widespread labor and human rights violations, there exist significant variation among mine sites as regards particular practices. The level of competition and/or collusion between state and non-state actors is, in fact, highly localized, demonstrating significant variance from one mining site to another. This can be seen, for example, in the area of mine security. In one mining site, the presence of state forces – FARDC, the mining police, the PNC – may be viewed as largely positive (even as they illegally tax miners and others). Yet, in another site, they may be viewed as fundamentally predatory. Interestingly, by listening to the stories of workers, perceptions of legitimacy, fairness and functionality vary widely by location. This suggests that it is not the institution per se – the FARDC, cooperatives, or traditional leaders – that determine higher levels of order and legitimacy within mines, but how they operate in specific places. This makes it difficult to provide blanket recommendations and requires an appreciation on the behalf of policy-makers and practitioners working on artisanal mining in the eastern DRC of the importance of local context. What may work well in one particular place and time may work less well, or indeed, be unnecessary or counterproductive, in another.

Accept and embrace artisanal mining as a legitimate livelihood strategy and significant element of the local and national economy –

Artisanal mining is one of the major industries in North and South Kivu and miners and others generally choose to work in the industry because they view the work as the a reasonable activity within the universe of available options. Because some miners experience devastating acts of violence and brutal repression and as a result of the industry's link to ongoing conflict, many reports and projects envision artisanal mining as a form of labor that is almost entirely negative. Yet, hundreds of thousands of Congolese work in and around the mines and countless more rely on mine earnings. By focusing on violations with a failure to engage the legitimacy of mining as a livelihood strategy, these efforts often do a disservice to potential reforms. Instead, a more productive policy vision would openly engage the very real abuses that characterize the industry, while accepting and even embracing the fact that artisanal mining is an important and productive activity for miners and others as well as a key part of the local, national and regional economy. If anything, policies should seek to increase

the economic benefits for miners who wish to remain in the industry while encouraging greater local development benefits in mining communities and in the general regions where mining is dominant.

Avoid understanding the solutions to problems in the artisanal mining industry as solely related to brutal actions of armed groups – The term “conflict minerals” has come to dominate reviews of artisanal mining in the eastern DRC. This is positive in that it highlights the success of years of advocacy efforts to draw much-needed attention to the link between the conflict and mineral wealth. However, this focus runs the risk of suggesting that the very real suffering of Congolese workers and others in the industry are wholly a function of abuses by state and non-state armed groups. While many key aspects of the structural problems of the artisanal mining industry cannot be fully resolved as long as the conflict continues, the larger issue of workers’ rights and the often repressive nature of artisanal mining is a serious issue that is likely to continue even where the conflict has ended. For example, many of the mine sites in this study are in areas where the state exerts complete or near-complete control and yet workers recount many violations which are similar to those in mines in less secure areas. The point is that only some of the core problems and rights violations in the artisanal mining industry can be understood and addressed through the conflict minerals framework.

Link policy vision with commitments to improved infrastructure – The infrastructure challenges in North Kivu and South Kivu are extraordinary. Outside of Bukavu and Goma, roads are generally in terrible condition such that short trips can take many hours, especially in the rainy season. Mines located in more distant, rural areas, are often only accessible through dirt paths connected to small landing strips serviced by planes. The resulting costs and levels of inefficiency are extraordinary and represent a key element of the problematic structure for artisanal mining. While improving infrastructure in the region is an enormous and costly challenge, this is an issue that should be raised in all policy discussions. The exceedingly low levels of infrastructure improvement are particularly striking given the multi-billion dollar investment of the international community in the region.

Avoid an overly simple understanding of the protective value of existing laws and state institutions – Artisanal mining in the eastern DRC supports multiple players within the region that operate outside of a clear engagement with existing regulations

and state institutions. It is not that state agencies and laws are irrelevant, but rather that the industry operates in a manner that enables, if not encourages, practices that ignore laws even where these practices represent serious human rights and labor rights violations. For this reason, addressing these substantial harms and violations endemic to artisanal mining is not served by a simple claim that laws should be enforced and state agencies should do their jobs. In fact, within the DRC there are multiple overlapping laws and regulations and distinctions between stated and real agency powers that lead many in the industry, particularly workers, to view law as a barrier to safer work environments, improved conditions and greater protections. Reference to laws and regulations and efforts to coordinate existing legislation and develop new rules should all be managed with a direct analysis of what actually works on the ground. Consequently, new policies or initiatives that fail to incorporate an understanding of this reality end up harming workers. For example, a recent report found that all trading houses surveyed admitted that miners themselves are most likely to receive less money for the minerals they extract once traceability schemes are rolled out in the Kivus, as trading houses will have to start paying a fixed amount per ton of minerals to finance the traceability scheme. (OECD, 2012) The same is true for other rules and regulations. Above all, increased state control with reference to multiple existing laws is unlikely to ensure substantive protections for those laboring in and around the mines.

Artisanal mining is structured in a manner that generally disempowers miners and other workers and commonly relies on systematic repression and violence – Our research reveals that, regardless of the presence or absence of non-state armed groups, the artisanal mining industry systematically disciplines miners in a manner that enables empowered actors to extract wealth while generally suppressing worker organization. For this reason the inherently repressive and ill-regulated nature of the industry cannot be fully understood through a legal analysis of rights, whether grounded in the broader protective vision of human rights or as bound to the specifics of mining related laws and regulations. Instead, what is required is an improved understanding of how to maximize worker empowerment and control within a system whose strength is often its flexibility and responsiveness to shifts in market demands. This requires a baseline of security coupled with mechanisms that create incentives for a safer and more protective workplace coupled with systems that increase workers' earnings, protect their savings and heighten their control over their lives.

Integrate miners and others in policy – One benefit of a research project that focuses on the lived experience of miners and others working in the artisanal mining industry is that it highlights how ordinary Congolese respond to the daily challenges of working in the artisanal mining industry. In case after case, miners direct their sensitivity and intelligence towards navigating work in a difficult and dangerous industry that offers some key advantages alongside significant brutality and abuse. Despite their poverty and vulnerability, miners and others use the tools they have to minimize their risks and maximize their benefits and, where they are successful, these lessons may be integrated more broadly within the industry.

b. Research and policy analysis

Create a multi-sectorial mapping exercise of artisanal mining in the eastern DRC – One means of empowering artisanal miners and other workers at the bottom of the supply chain could start by conducting a full mapping of all actors involved in the industry. An excellent list of national and provincial actors is available in perhaps the most comprehensive assessment of artisanal mining in the DRC to date, produced by Pact in 2010 and referenced in the bibliography to this report. Yet, what might be valuable today would be a mapping of all artisanal mining actors and networks, connecting state agencies, NGOs, and private interests such as traders. This might provide assistance in gauging the relative effectiveness of policy interventions. Once this mapping exercise has been done, likely responses of each actor to the proposed intervention can be anticipated, risks identified and mitigated, and opportunities revealed and exploited. If the potential risks out-weigh the benefits, the intervention should be redesigned or abandoned for another, more appropriate course of action.

Engage in coordinated review of multiple policies to address conflict minerals – Over the past several years, the DRC government, the international community, various governments and multiple domestic and international NGOs have created a series of different systems and initiatives to address the issue of conflict minerals in the country. These mechanisms vary in terms of their legal status and regulatory demand and tend to be based on the concepts of due diligence, certification, and traceability. These include the DRC government's work with MONUSCO on "centres de négoce", elements of the U.S. Dodd-Frank Act, the industry-led ITRI Tin Supply Chain initiative, the German government's Federal Bureau of Geo-

Sciences and Natural Resources (BGR) mineral tracing system, the International Conference on the Great Lakes Region's (ICGLR) Regional Certification Mechanism (RCM) data collection, and promotion of the Extractive Industries Transparency Initiative (EITI), and the OECD's "Due Diligence Guidance on Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas". While the ICGLR initiatives highlight compatibility with other mechanisms (such as the ITRI/ITSCI, BGR/CTC and OECD guidelines), there is a pressing need for clarity and coordination among these systems. At present, virtually all actors within the DRC artisanal mining industry are unclear as to the full scope of these systems and the ways in which they will impact mining and the lives of miners. To some degree, this lack of clarity is a function of the evolving nature of the policies. Nevertheless, a system of integration and coordinated review and communication would be of great value for improving the industry and better protecting the fundamental rights of workers and others.

Need for more field based data on the industry – In general, there is a need for more accurate, field-based data on artisanal mining. One reason that it is difficult to make clear claims about what is going on in the industry and which policies have a positive impact is that there is a lack of rigorous data collection. IPIS is involved in a very useful region-wide review of mine locations and mine conditions. This is an excellent first step which could be supplemented with formal multi-site surveys, clear data collection on mine payments, improved information about mining injuries and deaths, improved mineral pricing data and case study reviews of mine sites.

- c. Direct assistance to miners and others working in artisanal mining

Increase workers' ability to manage their money and control finances – While artisanal miners are relatively low wage manual laborers, many earn more money in the industry than they do pursuing other opportunities. This is true despite the inherent uncertainties of the industry and the fact that mine workers earn money in relation to the value of what they extract (or wash, carry, etc.) Yet, when miners earn money our research revealed that they have few if any mechanisms to safely store or save their earnings. This significantly impacts their ability to use mining as a means for improving their finances and the well-being of their families. As such, workers would benefit from systems of effective savings and sending funds to their families.

In addition, these efforts could be linked with non-profit systems of small loans, miners' credit unions, as well as training in managing earnings and planning to address the uncertainties of the industry.

Train workers in fundamental rights – The oral history and case study research as well as other aspects of the Kazisafi/RITEWORK project demonstrate that miners and others are eager to learn more about labor rights and human rights. This is true even where they understand the limitations of effectively advocating for their rights and where they understand that formal domestic and international law protections are partially and inadequately implemented at mine sites. There should be expanded rights training, capacity building and education for miners and others involved in artisanal mining covering DRC laws, international norms, and related issues.

Increase access to protective equipment and safety training – Artisanal mining in the eastern DRC is extremely dangerous and serious injuries are so common that miners view these as an inherent element of participation in the industry. There is no widely available data on injuries in the industry, exceedingly limited health care for injured miners, and no compensation mechanisms for miners injured or killed. Our research revealed a general lack of access to even basic safety equipment, such as boots and protective headgear. While there is no simple way to improve the safety of the artisanal mining industry, the seriousness of the problem merits a focused, practical response. There is a pressing need for financial mechanisms to offset injuries and death. In addition, incentives should be implemented so that mine bosses and crew bosses heighten safety protections and so that workers can receive much-needed care when they are injured. It may also be useful to provide mine safety training as regards tunnel construction and management, basic first aid and related issues.

Provide literacy and related training to miners – Miners would benefit from literacy training and other assistance to empower them to protect their own rights. Whatever vulnerabilities miners and other mine workers possess, such as illiteracy and difficulties tracking costs and charges, are used by mine bosses and others as a tool for repressive actions. This type of education could be integrated within other service programs and may have, over the long run, a significant positive impact as regards worker empowerment.

Explore mobile phone technology – Mobile phone technology may provide a number of efficient means to help protect miners and others working in the industry. Mobile applications may be useful for safely sending remittances back to families or for communicating real time information mine security and mineral prices. While not all mine sites have cell phone service, mobile phones may turn out to be a valuable tool for protecting miners' rights.

Provide livelihood diversification support – While mining is a productive means of earning a living for many Congolese, the quality of mining as a livelihood option and the general protection of workers' rights will be improved by expanding economic opportunities for miners and others living in and around mine sites. Many miners are interested in learning skills through which they can leave artisanal mining. Others would benefit from added income on off-seasons, particularly as regards agricultural production. In addition, mining is an industry commonly impacted by global market shifts as well as changing regulations and policy initiatives. Skills training, capacity building, micro-lending and other programs in mine producing areas are likely to improve the overall labor market. Certainly the Kazisafi/RITEWORK alternative livelihoods initiative displayed the value of such training and its usefulness for improving individual opportunities and area development.

d. Governance and regulation of artisanal mining.

Review current DRC mining rules and institutions – At present, there are multiple DRC government agencies responsible for the management of the artisanal mining sector. These include the Congolese Ministry of Mines which has overall responsibility, as well as the Provincial Authority of Mines; the Mining Registry (CAMI); the Geology Directorate; the Technical Unit for Coordination and Planning of Mining (CTCPM); the Service for Assistance and Organization of Artisanal and Small-Scale Mining (SAESSCAM) and; the Centre for Evaluation, Expertise, and Certification (CEEC). And these and other government bodies are supposed to manage institutional regulations, various presidential and executive branch directives, the 2002 Mining Code and the 2003 Mining Regulations. Often, there is unnecessary duplication and overlapping of roles between these distinct agencies. For example, multiple agencies are required for an Artisanal Exploitation Zone (AEZ) to be opened and the getting a required “carte d’exploitant artisanal” or miner’s card is a lengthy and bureaucratic process. The complexity of these institutions and their associated rules should be carefully

reviewed and simplified. While this is a significant shift for DRC governance, such changes will be useful for making the system functional. Some possible reforms include: supporting CAMI to establish officially recognized AEZs throughout North Kivu and South Kivu, and disperse this information in relevant mining communities; decentralizing the process of acquiring miner's cards; supporting cooperatives where they appear to represent workers, and working to create locally relevant associations in areas where they do not; and a total reform of SAESSCAM, or possibly closing it down.

Improve rights protections in artisanal mining – Artisanal mining in the eastern DRC is defined by systematic labor rights and human rights violations. While there is no singular means to address these violations, focused efforts should be directed towards several key issues including ending forced labor, ending the wide reliance on child labor and reducing the dangers and inequity faced by women. In many cases, there is progress in these areas as many miners expressed an understanding of basic rights questions and restrictions, for example, on child labor. Nevertheless, ending forced labor requires significant penalties for state agencies – FARDC, police, etc. – that use forced labor as both a mode of punishment and a means of making money. Similarly, mechanisms of labor control by mine bosses and crew bosses that involve excess charges, debts and threats should be addressed. Dealing with these issues involves a combination of education, worker empowerment and the development of useful, local solutions. There is significant interest among many actors in the artisanal mining industry to end the most brutal forms of violations, if only because there are clear financial and efficiency incentives in doing so. In addition, miners are others are strongly motivated by understandings of justice and fairness which can be leveraged for a variety of local strategies for addressing violations.

Develop alternative governance policies that expand engagement with non-state actors – At present, most discussions of governance within the artisanal mining industry deals with government agencies and, to some degree, with government approved cooperatives. However, the actual management of artisanal mine sites involve multiple other actors such as mine bosses, crew bosses, traditional leaders, traders and others. These actors can conceivably play a positive role in improving conditions and even in expanding worker protections. Certainly their interests and capacity to contribute are no less significant than state actors and, in fact, they commonly have a greater vested interest in actual mine

production. Central to this is a consideration of financial incentives which are arguably the primary mobilizing principle in the artisanal mining sector in the eastern DRC, for all actors involved. Thus, anticipating the financial implications of a proposed intervention and how actors are likely to respond will be critical in determining the success or otherwise of the policy or initiative. Another valuable starting point could be the question: in the absence of wider governance reform, what existing governance structures or pressure points could be leveraged to bring about positive change in the lived experiences of Congolese artisanal miners and low-level workers? For example, our project revealed the significant role of mine bosses and crew bosses as well as traditional leaders and councils of elders. Crew bosses and pit owners were implicated in over half of violations recorded in the case studies. However, targeting this group might yield the greater results in terms of improving the day-to-day lives of miners (although it is not clear from the research how much room for negotiation the crew bosses and pit owners have, often being in debt to people further up the supply-chain themselves). The same might be said for traditional leaders and local councils of elders who are often viewed as repressive players as regards workers' lives. Yet, their judgment on some issues is viewed as more legitimate than that of state actors and there may be room to work with these councils as a means to improve local governance and justice for miners and others.

This study focuses on documenting the lived experience of miners and others. This perspective grounds an analysis of the situation in the ways in which Congolese manage their direct engagement with mining, struggling day to day with the difficulty of the work, the ever present dangers, the industry's constant uncertainty, and the shifting nature of earnings. In other words, understanding violations within the artisanal mining industry from the perspective of miners and others working in the mines such as porters and washers, grounds policy analysis in lived experience.

This has a useful corrective to more abstract analyses such as general claims that laws should be respected and the state should govern more fairly. That is, there exist a significant number of studies that present the answers to the challenge of systematic violations within the industry through claims to "end corruption", "effectively implement worker protections", "ensure appropriate tax collection", "stop smuggling" and similar statements. To a larger degree these claims confuse documenting the problems with outlining solutions. While violations of labor rights and human rights only make sense by grounding the analysis in domestic and international law, it is grossly inadequate to suggest that addressing these problems is simply a

function of creating a “stronger and more effective state” that acts to “fully respect the law”.

By listening to the voices of miners and considering the complexity of local reality, these issues are placed in perspective in a manner that illustrates how the artisanal mining industry builds on and enables fundamental state weakness, governance incapacity and the limited reach and legitimacy of laws and regulatory institutions. It is therefore less useful to call for a different type of power structure in the region (valuable as that might be for addressing many rights violations) and more useful to consider the reality of life on the ground and to develop policies that engage Congolese reality as it is. Viewed in a different fashion, it is important to engage the complexity of artisanal mining in a multi-faceted manner that starts with a basic respect for workers and the Congolese people and envisions policy actions as diverse, flexible rather than rigid, and structured with an understanding of a distinct potential achievements over a reasonable timeline.

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